

# Public Rights of Way Committee

## Agenda

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<b>Date:</b>	<b>Monday 16th June 2014</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the top of each report.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**

To receive any apologies for absence.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Minutes of Previous meeting** (Pages 1 - 4)

To approve the minutes of the meeting held on 18 March 2014 as a correct record.

4. **Public Speaking Time/Open Session**

Member of the public may speak on a particular application after the Chairman has introduced the report, provided that notice has been given in writing to Democratic Services by 12 noon one clear working day before the meeting. A total of 6 minutes is allocated for each application, with 3 minutes for objectors and 3 minutes for supporters. If more than one person wishes to speak as an objector or supporter, the time will be allocated accordingly or those wishing to speak may agree that one of their number shall speak for all.

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For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

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Also in accordance with Procedure Rule No. 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee. Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice of the intention to speak, however as a matter of courtesy, a period of 24 hours notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

5. **Public Rights of Way Annual Report 2013-2014 and Work Programme 2014-2015** (Pages 5 – 39)

To consider report on the achievements of the Council in terms of its public rights of way functions during the year 2013-14 and the proposed work programme for the year 2014-15

6. **Wildlife and Countryside Act 1981 - Part III, Section 53: Application to Upgrade Public Footpaths Nos.6 & 7(pt) Arclid and No.16 Smallwood to Bridleways.** (Pages 40 – 61)

To consider the application to upgrade Public Footpath Nos.6 and 7 Arclid and No.16 Smallwood to Bridleways

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 53 (part), Parish of Alderley Edge** (Pages 62 – 67)

To consider the application to divert part of Public Footpath No.53 in the parish of Alderley Edge

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath Nos. 4 and 5 (parts), Parish of Smallwood** (Pages 68 – 73)

To consider the application to divert part of Public Footpaths Nos.4 and 5 in the parish of Smallwood

9. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 9 (part), Parish of Minshull Vernon** (Pages 74 – 79)

To consider the application to divert part of Public Footpath No.9 in the parish of Minshull Vernon

10. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 4 (part), Parish of Marthall** (Pages 80 - 85)

To consider the application to divert part of Public Footpath No.4 in the parish of Marthall

11. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 9 (part), Parish of Wettenhall** (Pages 86 - 91)

To consider the application to divert part of Public Footpath No.9 in the parish of Wettenhall

12. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 3 (Part) Parish Of Alsager** (Pages 92 - 98)

To consider an application for the diversion of part of Public Footpath No.3 in the parish of Alsager

**THERE ARE NO PART 2 ITEMS**

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Tuesday, 18th March, 2014 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor Rhoda Bailey (Vice-Chair, in the Chair)

Councillors S Davies, O Hunter (Sub for Cllr J Wray), S Jones and M Parsons

**Officers**

Mike Taylor, Rights of Way Manager  
Genni Butler, Countryside Access Development Officer  
Marianne Nixon, Public Path Orders Officer  
Rachel Goddard, Solicitor  
Rachel Graves, Democratic Services Officer

**33 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors D Druce, K Edwards and J Wray.

**34 DECLARATIONS OF INTEREST**

There were no declarations of interest.

**35 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 9 December 2013 be confirmed as a correct record and signed by the Chairman.

**36 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public present wished to speak.

**37 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO'S 12 (PART) AND 12A, PARISH OF HOUGH**

The Committee considered a report which detailed an application from Mr E Wright (the Applicant) of the Hollies Farm Kennels & Cattery, Birch Lane, Hough, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.12 and Public Footpath No.12A in the parish of Hough.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or the owner, lessee or occupier of the land crossed by the path.

The land over which the sections of the paths to be diverted, and the proposed diversions belonged to the Applicant. Public Footpath No.12A Hough passed close to the kennel and cattery buildings and the house at the Applicant's property and then crossed their garden to terminate at a field gate where it joined Public Footpath No.12 Hough.

Diverting the path away from the Applicant's kennel/cattery business and home would enable better management of livestock within their business whilst affording improved privacy to their home and greater security for both.

The consequence of diverting Public Footpath No.12A Hough would be that Public Footpath No.12 Hough, to which it connects, would become a cul-de-sac path. To keep the paths connected and preserve the right to walk between Cobbs Lane and Birch Lane, Public Footpath No.12 must also be diverted. Diverting to the proposed alignment would provide better stock and land management for the Applicant.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpaths would offer improved privacy and security to the Applicant's property and also be more convenient for users as would have less path furniture to negotiate. It was therefore considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee unanimously

**RESOLVED:** That

- (1) An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath Nos.12 and all of Public Footpath No.12A Hough by creating new sections of each public footpath and extinguishing the current path sections, as illustrated on Plan No.HA/093, on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- (3) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**38 CYCLE TRACKS ACT 1984 PROPOSED CYCLE TRACKS ORDER: CREWE FOOTPATHS NOS. 3 (PART) AND 36**

*Note: Councillor S Jones arrived at the meeting during consideration of this item and was permitted to speak but did not vote on the matter.*

The Committee considered a report which detailed a proposal to change the legal status of lengths of Public Footpath Nos.3 (part) and 36 in Crewe to cycle track.

Under section 3 of the Cycle Tracks Act 1984, a local highway authority had the power to make a Cycle Track Order to convert a public footpath into a cycle track.

Crewe Local Area Partnership Highways sub-group and the sustainable transport charity Sustrans had put forward a proposal to convert lengths of footpath for use by cyclists. The proposal would enable cyclists to use the route as a traffic-free cycle track to travel to and from the Crewe town centre and allow the promotion of the route to such users through signage and mapping.

It was proposed that two lengths of public footpath running between Hungerford Road, Coleridge Way and Sydney Road in Crewe – as shown between points A-B-C-D on Plan No.CTA/001, be made into cycle tracks. The route would offer connections between Crewe town centre and communities at the edge of the town and in the villages beyond. These routes were in fact already being used illegally as cycle tracks for this purpose.

A safety assessment had been carried out by Cheshire East Highways which recommended that the proposal to convert to cycle track be applied only to the route that ran between Hungerford Road and Sydney Road (points A-B-D on Plan No.CTA/001) as it offered a straight wider route. The spur leading from this route to Coleridge Way (between points B-C) was considered to have insufficient width to promote as a shared use pedestrian/cyclist path.

The Committee noted the responses received from the informal consultation undertaken and concluded that the width and sightlines on the route between Hungerford Road and Sydney Road (points A-B-D on Plan No.CTA/001) would be adequate for the path to be used as a shared use route, whilst the spur leading to Coleridge Way (points B-C) did not have sufficient width to be converted into a cycle track.

The Committee **RESOLVED:** That

- (1) An Order be made under Section 3 of the Cycle Track Act 1984 to convert to cycle track those lengths of public footpath between points A-B-D, as illustrated on Plan No.CTA/001.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- (3) In the event of objections to the Order being received and not resolved, Cheshire East Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.00 pm and concluded at 2.35 pm

Councillor Rhoda Bailey (Vice-Chair, in the Chair)



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Public Rights of Way Annual Report 2013-2014 and Work Programme 2014-2015

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#### **1.0 Report Summary**

- 1.1 This report records the achievements of the Council in terms of its public rights of way functions during the year 2013-2014 and sets out the proposed work programme for the year 2014-15. Details are set out in Appendices 1, 2 and 3.

#### **2.0 Recommendations**

- 2.1 That Members note the Annual Report for 2013-2014 and approve the proposed Work Programme for the Public Rights of Way Team 2014-2015.

#### **3.0 Reasons for Recommendations**

- 3.1 As set out in the background and options section of the report (section 10).

#### **4.0 Wards Affected**

- 4.1 All

#### **5.0 Local Ward Members**

- 5.1 All Members

#### **6.0 Policy Implications**

- 6.1 The development of the Rights of Way Improvement Plan (see Appendix 3) is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.
- 6.2 In addition, the ROWIP, as an integrated part of the Local Transport Plan, is set within the context of indicators concerning sustainable transport, air quality and CO<sub>2</sub> emissions.

#### **7.0 Financial Implications**

- 7.1 None arising.

## **8.0 Legal Implications**

8.1 None arising

## **9.0 Risk Management**

9.1 There have been two claims against the Council in 2013/14, both for surface defects. Whilst neither has been concluded we are of the view that both paths were of an acceptable level of maintenance.

## **10.0 Background and Options**

10.1 The work programme for the Public Rights of Way Team is usually approved by the Rights of Way Committee at the first committee meeting of the financial year, in the form of a series of targets. Targets are set in the context of the Countryside Agency's (now Natural England) National Targets for public rights of way, which have as their aim that the rights of way network in England and Wales should be:

- Legally Defined
- Properly Maintained
- Well publicised

10.2 In addition to those targets, and reflecting the range of new work imposed by the Countryside and Rights of Way (CROW) Act 2000, targets in relation to four other areas are also set:

- Implementation of the Rights of Way Improvement Plan
- Implementation of the CROW Act 2000: New Duties and Powers
- Countryside Access Development and Initiatives
- General Support and Administration

10.3 Each area is examined individually, below, with the successes of 2013/14 contained within the relevant appendices.

## **11.0 Network Management – Maintenance and Enforcement**

11.1 The Network Management and Enforcement Team consists of three full-time officers who deal with the protection and maintenance of the network. They operate on an area basis, with each officer responsible for approximately 630 kilometres of the network. Within their area, they are responsible for maintenance and enforcement to remove obstructions and keep the path network available for use.

11.2 An outline report and work programme for the Maintenance and Enforcement Team is attached at Appendix 1. The component tasks represent the "Milestones" identified in the former Countryside Agency's National Targets.

- 11.3 611 path problems have been logged throughout the year 2013/2014 which compares with the 509 problems that were logged throughout the year 2012/2013. The charts below illustrate the numbers and types of problems reported. In Fig 2 the numbers and distribution of different types of issues are very similar to 2012/2013. Fig 3 shows that the number of priority 1 (public safety) issues has reduced significantly from the previous year from 16 to 3.

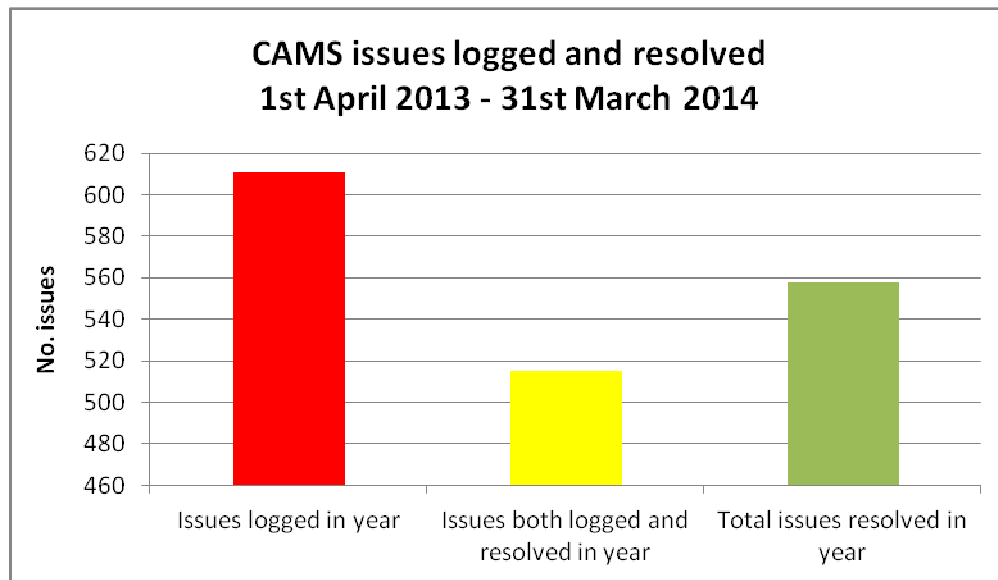


Fig 1.

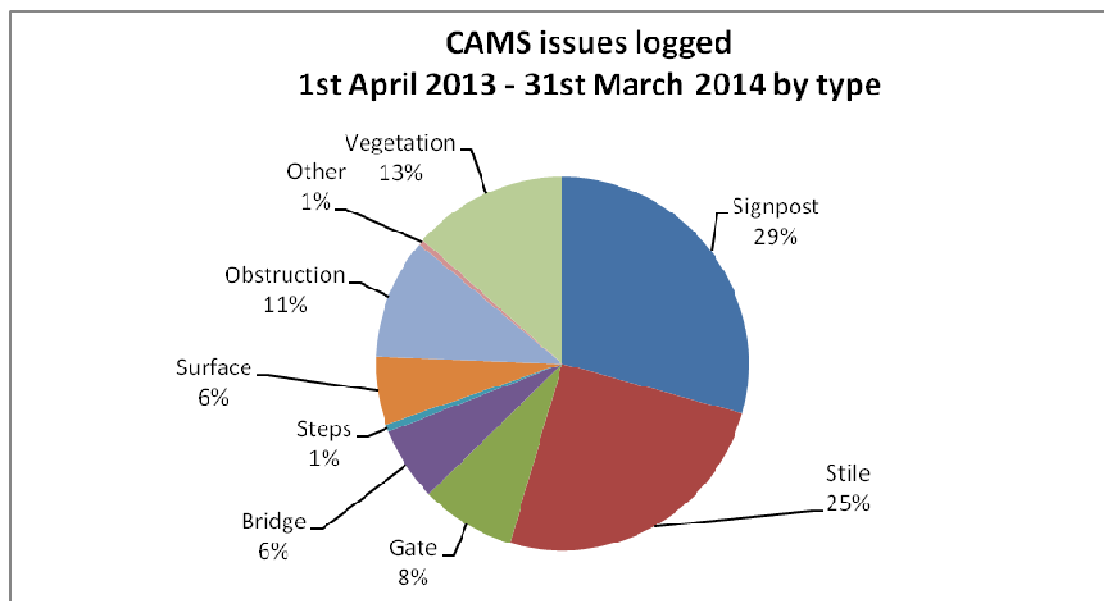


Fig 2.

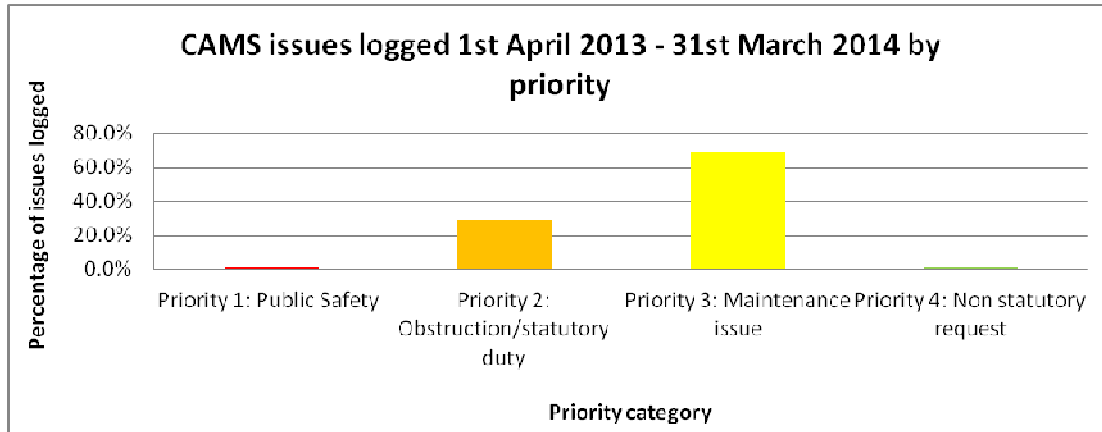


Fig. 3

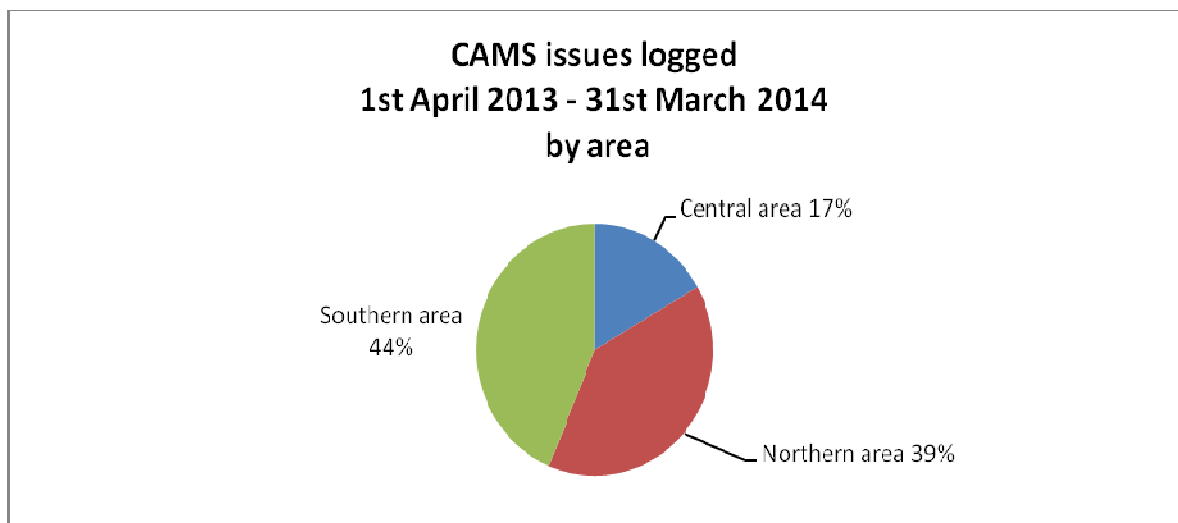


Fig 4.

- 11.4 For the first time in three years the initial set budget has been available without a spending freeze allowing significant inroads to backlogs to be made.

## 12.0 Path Inspection

- 12.1 Path inspection exists in the form of the former National Best Value Performance Indicator 178: percentage of paths deemed 'easy to use'. Although councils are no longer required to report on BVPI178 in Cheshire it has been collected as a local indicator for the Local Transport Plan - LTP 13. The team duly carried out the BVPI 178 inspection this year: the percentage pass rate was 83%, which compares with a pass rate of 80% for 2012, 84% for 2011, 85% in 2010 and 84% for 2009.

### **13.0 Rights of Way Improvement Plan - Access Development**

- 13.1 There is one full-time member of staff dedicated to the implementation of ROWIP and access development projects. Work has continued this year in delivering access projects from the existing ROWIP: Appendix 3 contains an outline annual report and work programme.
- 13.2 The Countryside Access Development Officer is responsible for the administration of the Cheshire East Local Access Forum. The post holder also facilitates the Rights of Way Consultative Group, attends multiple groups and forums on behalf of PROW/Countryside, comments on planning applications and seeks planning gains, and responds to general enquiries and requests for information.

### **14.0 Legal Orders Team**

- 14.1 The legal orders team comprises four officers (3 x full-time, 1 x part-time) who operate on a caseload basis and deal with public path orders, (diversions and extinguishments), definitive map modification orders, (changes to the definitive map) emergency and temporary closures, land searches, planning applications and day to day enquiries. One post deals exclusively with Public Path Orders based on public applications. This post, created in 2010 is funded by the fees from those applicants and nets nil on the budget.
- 14.2 The year has seen the previous increase in planning applications that the team have been consulted on continuing at a high level and increasing from 201 to 215. The need to respond to these and the consequent work generated liaising with developers and colleagues in the Planning Department has had a significant knock on effect on other areas of work, reducing the amount of time available for core Definitive Map Modification Orders investigations.

### **15.0 Policy development**

- 15.1 Cheshire East Council inherited a raft of County Council policies relating to the public rights of way function. Where necessary, these have been amended for Cheshire East and approved by the Rights of Way Committee and are set out below. Policy development always reflects the changing circumstances within which it has to work and in 2013/2014 the Growth and Infrastructure Act 2013 introduced changes to the way highways Act 1980 s31 statutory declarations are managed including the introduction of a cost recovery charge for the function.
- 15.2 The policies currently in place reflect the following activity.
- Maintenance and Enforcement Protocol
  - Statement of Priorities for Definitive Map Modification Orders
  - Charging Policy for Public Path Orders, Searches & Temporary Closures and HA 80 S31 declarations.

- Policy for Structures on Public Rights of Way
- Standard Response Times for Different Categories of Problem on the Network

## **16.0 Local Access Forum and ROW Consultative Group**

- 16.1 The first Annual Report of the new Cheshire East Local Access Forum is attached as Appendix 4.
- 16.2 Since Local Government Review in 2009 the Forum has covered both Cheshire East and Cheshire West and Chester Council areas. However in 2012 CWAC decided that their interests would be best served by a Local Access Forum for their own area and consequentially the Cheshire Local Access Forum was dissolved and two forums set up, one for Cheshire East Council area and one for Cheshire West. The first meeting of the Cheshire East Local Access Forum was held on 25<sup>th</sup> April 2013.
- 16.3 The Cheshire East Local Access Forum is complemented by the Cheshire East Rights of Way Consultative Group which meets twice yearly.
- 16.4 The Consultative Group operates to achieve the following purposes:-
- to enable interest groups (users, landowners and others) to engage in constructive debate and discussion about issues of law, policy, principle and work programming with members and officers of the Cheshire East Council;
  - to encourage understanding of each others' concerns; and,
  - to participate in the consultation process and ongoing monitoring associated with the Rights of Way Improvement Plan.
- 16.5 The Consultative Group meetings have now been extended to allow user group representatives to meet Network Management officers on a one to one basis in order to discuss work priorities and individual case issues. This allows user groups and the council to agree prioritisation of issues and works.

## **17.0 Budget**

- 17.1 Whilst the team has suffered, along with the rest of the council from a reduction in base revenue budgets over the last few years the work output remains impressive. During this year the budgets have remained as set throughout the year allowing the team to both plan spending and clear some of the previous backlog.
- 17.2 Despite the pressures on the budget the team have managed to perform to an impressive level and the "ease of use" BVPI 178 percentage, (see 12.1 above) of 83%, reflects this.

## **18.0 Conclusion**

- 18.1 As with previous years the team has delivered to a high standard throughout the year and it is to be hoped that we now experience a period of budget stability which allows that hard work to continue and be reflected in the condition of the network.

## **19.0 Access to Information**

- 19.1 The background papers relating to this report can be inspected by contacting the report writer:

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Designation: Public Rights of Way Manager  
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# APPENDIX 1

## SECTION 3: NATIONAL TARGET 2: "PROPERLY MAINTAINED"

Component Task		Source			Achievements April 2013 to March 2014	Targets 2014/15
No	Measure of Success					
3.1	All footpaths, bridleways and byways correctly signposted where they leave a metalled road.	C/side Act 68 NERC Act 06			<ul style="list-style-type: none"> <li>270 signs erected across the borough.</li> </ul>	<ul style="list-style-type: none"> <li>Installation of additional signs and replacement signs following loss and damage to ensure the requirements of Countryside act 1968 s 27 are fulfilled.</li> </ul>
3.2	All PROW clear of obstructions, misleading notices, other hindrances or impediments to use.	HA 80 s130			<ul style="list-style-type: none"> <li>Enforcement actions saw 14 notices served for cropping and 3 for general obstruction.</li> <li>Additionally 33 "seven day" warnings were issued in relation to cropping offences.</li> <li>Officers have not been required to remove obstructions because offenders have responded successfully in all cases.</li> </ul>	<ul style="list-style-type: none"> <li>Carry out necessary enforcement work in line with adopted protocols to ensure that the duty set out in Highways act 1980 is fulfilled.</li> </ul>
3.3	Bridges, stiles, gates etc are in place where required; all are safe and convenient to use.	HA 80 s41 and s146			<ul style="list-style-type: none"> <li>In Cheshire East 252 stiles, 89 gates comprising 66 kissing gates, 6 bridleway gates and 17 pedestrian gates have been installed. Additionally 59 bridges of varying lengths have been installed.</li> </ul>	<ul style="list-style-type: none"> <li>Renew and repair structures to ensure that they adequately allow the public to access all public paths in Cheshire East. Assist owners and occupiers to repair and replace stiles and gates on public rights of way. Replace structures with less limiting barriers wherever possible in line with ROWIP policies, DDA and Equality Act 2010.</li> </ul>
3.4	Surface of every PROW is in proper	HA 80 s41			<ul style="list-style-type: none"> <li>A routine maintenance programme is in operation and</li> </ul>	<ul style="list-style-type: none"> <li>The routine maintenance programme will be extended as new paths</li> </ul>

Component Task		Source			Achievements April 2013 to March 2014	Targets 2014/15
No	Measure of Success					
	repair, reasonably safe and suitable for the expected use.				<p>Paths comprising 179 km were subject to routine strimming/ tractor flailing at least once during the growing season with many cut more frequently to a maximum of 3 cuts per annum.</p> <p><b>Special projects facilitated with additional funding from other departments and as part of ROWIP implementation:</b></p> <ul style="list-style-type: none"> <li>• Sutton FP1. Drainage.</li> <li>• Stapeley FP2 surfacing.</li> <li>• Wybunbury FP4 Surfacing.</li> <li>• Baddiley FP 16 Drainage.</li> <li>• Acton FP2 Surfacing.</li> <li>• Willaston FP 10 Surfacing.</li> <li>• Wybunbury FP13 Surfacing.</li> <li>• Disley FP 16 Surfacing.</li> <li>• Disley FP 38 Stone steps.</li> </ul>	<p>requiring routine maintenance are encountered (e.g. paths created through ROWIP).</p> <ul style="list-style-type: none"> <li>• Officers will continue to work with colleagues in other departments and other partners in order to facilitate additional funding for special projects in relation to rights of way wherever possible.</li> </ul>
3.5	All PROW inspected regularly by or on behalf of the authority.	HA 80 s58			<ul style="list-style-type: none"> <li>• Bridges are inspected every two years, but paths in general are not inspected due to a lack of resources. This could result in a lack of a legal defence to claim(s) for personal injury.</li> <li>• All maintenance officers hold bi-annual meetings with the relevant representative of the walking and</li> </ul>	<ul style="list-style-type: none"> <li>• The maintenance officers will continue to hold bi-annual meetings with the relevant representatives of the walking, equestrian and other user groups to agree work priorities and to discuss the results of the survey work carried out by these groups.</li> <li>• Volunteer survey scheme to be</li> </ul>

Component Task		Source			Achievements April 2013 to March 2014	Targets 2014/15
No	Measure of Success					
					equestrian user groups to agree priorities for work.	extended dependant on availability of volunteers.
3.6	The authority is able to protect and assert the public's rights and meet other statutory duties (e.g. to ensure compliance with the Rights of Way Act 1990).	HA 80 s130			<ul style="list-style-type: none"> <li>All cropping obstructions were responded to within 4 weeks of reporting.</li> </ul>	<ul style="list-style-type: none"> <li>Continue to adhere to the response times set out in the current standard.</li> </ul>
3.7	Waymarks or signposts are provided at necessary locations and are adequate to assist users. Waymarking scheme/initiative in place.	C/side Act 1968 s27			<ul style="list-style-type: none"> <li>Waymarking is undertaken by staff and contractors as appropriate. Additionally waymarkers are provided to partners such as Mid-Cheshire Footpaths Society and the Ramblers' Association to enable them to replace missing and damaged waymarkers.</li> </ul>	<ul style="list-style-type: none"> <li>Waymarking and signposting will be undertaken as appropriate.</li> </ul>

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## Appendix 2

### Legal Orders Team

#### SECTION 2: NATIONAL TARGET 1: “LEGALLY DEFINED”

Component Task		Source	Achievements 2013/14	Targets 2014/15
No	Measure of Success			
2.3	No backlog of legal events requiring orders to be made	WCA 81 S53(2) (a) & 53(3) (a)	<ul style="list-style-type: none"> <li>Legal Event Modification Order made for all legal events in 2013/14</li> </ul>	<ul style="list-style-type: none"> <li>Legal Event Modification Order to be made for all legal events in 2014/15</li> <li>Schedule 5 Para 2 of CROW Act 2000, commenced April 2008, obviates need for separate legal event order where Definitive Map change cited. However, national debate about the technical aspects of this provision and advice to LAs is to continue making separate LEMOs for time being.</li> </ul>
2.4	No backlog of applications to modify the Definitive Map	WCA 81 Sch 14	<ul style="list-style-type: none"> <li>2 Schedule 14 applications determined and a further 10 applications under active investigation during the year (see below).</li> <li>18 applications remain in backlog (see below). The oldest of these dates to 2004.</li> </ul>	<ul style="list-style-type: none"> <li>Target is to determine 6 cases.</li> </ul>
2.6	No backlog of decided applications/other cases awaiting definitive map modification orders	CoAg	2 orders determined <ul style="list-style-type: none"> <li>1 DMMO order confirmed</li> <li>1 DMMO order confirmed with modifications</li> <li>0 appeals against refusal, awaiting decision</li> <li>0 appeals against non-determination within 12mths</li> </ul>	<ul style="list-style-type: none"> <li>Continue to make orders as soon as reasonably practicable.</li> <li>Contested DMMOs to be submitted to PINs.</li> <li>Directed applications/orders to be processed as required.</li> </ul>

Component Task		Source	Achievements 2013/14	Targets 2014/15
No	Measure of Success			
2.7	The authority has considered the need to consolidate the Map and take any necessary action	WCA 81 S56	<ul style="list-style-type: none"> <li>Preparation of digital map for consolidation complete.</li> <li>Work to consolidate statements begun.</li> </ul>	<ul style="list-style-type: none"> <li>On hold due to lack of staff.</li> </ul>
2.9	No other matter affecting the Definitive Map outstanding	CoAg	<ul style="list-style-type: none"> <li>Electronic list of map anomalies was completed in 2008. 0 anomalies corrected during 2012/13.</li> </ul>	<ul style="list-style-type: none"> <li>No progress can be made with rectifying anomalies without additional staff resources (in addition to PPO income generation post).</li> </ul>

**Summary of Legal Orders work from April 2013 to March 2014, backlog of work outstanding and forecasts for 2014/15**




<b>Area of work</b>	<b>Work completed/in progress April 2013 – March 2014</b>	<b>Backlog</b>	<b>Projected work 2014/2015</b>
<b>Planning application consultations</b>	215	n/a	
<b>Rights of Way searches</b>	91	n/a	
<b>Highways Act s31 deposits</b>	3	n/a	
<b>Temporary &amp; Emergency Closures</b>	46	n/a	
<b>Gating Orders</b>	0	n/a	0
<b>Public Path Orders HA80</b>	10 Orders confirmed, 18 cases in progress	28 applications on waiting list	20 Orders to confirmation stage.
<b>Local Government Act 2000 Dedications</b>	3 Deed of Dedications completed	0 Deed of Dedication in progress	
<b>Public Path Orders TCPA90</b>	2 Orders confirmed, 5 cases in progress	n/a	5 cases likely to be dealt with.
<b>Contested Orders referred to PINs</b>	HA80 = 1 WCA81 = 3 TCPA90 = 0	Contested WCA81 case to be referred to PINs	
<b>Definitive Map Modification Order Applications – schedule 14 applications</b>	2 Orders confirmed, 10 in progress	18	2 Cases to be targeted.
<b>Definitive Map “List B” issues</b>	3		3 cases targeted
<b>Definitive Map Anomalies (investigation/legal orders required)</b>	0 completed	260+	6 without additional staff resources or additional budget to commission consultants

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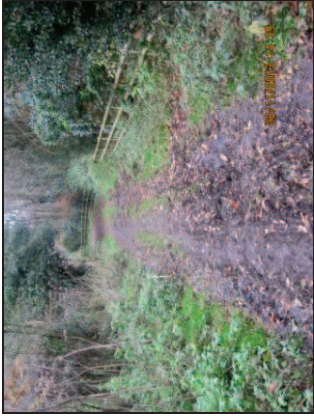



Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3	X7	<p><b>Walks for All leaflet revision</b></p> <ul style="list-style-type: none"> <li>• Revision of leaflet suggesting 10 easy access walks in the borough.</li> <li>• Provides full accessibility information including parking, public transport, gates, steps, gradients and toilets.</li> <li>• Revised in partnership with Countryside Ranger Service.</li> <li>• Includes improved maps and directions to assist walkers.</li> <li>• Proving popular with rapid uptake by libraries, visitor information centres and other outlets.</li> </ul>	<ul style="list-style-type: none"> <li>• Project completed.</li> <li>• Cheshire East Local Access Forum assisting in the collation of other walks for a potential subsequent leaflet.</li> </ul>
H2 H3 S7 S8	W84  Various  W20	<p><b>Advice to local user groups</b></p> <ul style="list-style-type: none"> <li>• Advice and assistance to local user groups in their planning of access improvements and external funding bids, including:</li> <li>• Church Minshull Parish Council seeking a circular walk encompassing the canal towpath: access between the towpath and adjacent footpath is to be improved by the Canal and River Trust as they undertake bridge works,</li> <li>• South East Cheshire Cycling Action Group seeking to make paths available for cycling,</li> <li>• East Cheshire Ramblers in seeking permissive path at Charles Head, Kettleshulme.</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing, as arising.</li> </ul>
H2 H3 S7 S8	X15	<p><b>Publicity to promote walking, cycling and horse riding</b></p> <ul style="list-style-type: none"> <li>• Press releases issued for projects underway and completed.</li> <li>• Newsletters, Twitter and Facebook feeds for all news items</li> </ul>	<ul style="list-style-type: none"> <li>• Work ongoing to coincide with national and local events and projects.</li> </ul>

Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7	n/a	<p><b>Congleton footpath No. 10</b></p> <ul style="list-style-type: none"> <li>Using s106 planning contributions secured to deliver improvements in the vicinity of developments.</li> <li>Surfacing part of an urban footpath, Congleton No. 10, to create a year-round walking route.</li> <li>The route links residential areas with Astbury Mere Country Park and forms an off-road link towards the town centre.</li> <li>Includes destination signage to encourage usage and a more accessible gate arrangement in response to local requests.</li> </ul> <div>    <div>Before</div> <div>Before</div> <div>After</div> </div>	<ul style="list-style-type: none"> <li>Project completed.</li> </ul>
H2 H3 S7 S8	T10  T92 T95  n/a	<p><b>Local Transport Plan cycling schemes</b></p> <ul style="list-style-type: none"> <li>Lacey Green, Wilmslow: improvement of paths between Lacey Green and Pownall Park areas of Wilmslow, linking to the new multi-user route through the Carrs park.</li> <li>Macon Meadows, Crewe: improvement of paths for shared use.</li> <li>Townsend Road to Thames Close, Congleton: improving accessibility between town centre and railway station.</li> <li>Victoria Avenue, Crewe: Cycle Safety Fund scheme.</li> </ul>	<ul style="list-style-type: none"> <li>Project completed.</li> <li>Project completed.</li> <li>Project completed.</li> <li>Project completed.</li> </ul>

Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7 S8	T25	<p><b>Dane Meadow access improvements</b></p> <ul style="list-style-type: none"> <li>Project to improve access within Dane Meadow public open space in Holmes Chapel. Externally-funded via Natural England's Paths for Communities Fund.</li> <li>Working with Holmes Chapel Partnership, Parish Council and Cheshire East Council Asset Management Service.</li> <li>Portfolio Holder and Committee approval secured to create nearly 1000 metres of new public rights of way, protecting public access for perpetuity.</li> <li>Maintenance agreement entered into with Parish Council to cover future path management.</li> <li>Legal process completed to create new public rights of way.</li> <li>New surfacing, steps, signage and interpretation installed to improve access, including disabled access to the flat area of the site.</li> </ul> <div>  <p>Unsurfaced path before</p>  <p>Accessible path surface</p>  </div>	<ul style="list-style-type: none"> <li>Improvement works being undertaken on adjacent public footpath which provides access to the Dane Meadow.</li> <li>Further surface works to be undertaken by Partnership on new route in response to local requests.</li> <li>Linking project proposal to connect Dane Meadow with Cranage village being pursued through project management system.</li> </ul>
H2 H3 S7 S8	n/a	<p><b>Mapping</b></p> <ul style="list-style-type: none"> <li>Assistance with mapping provided to Cheshire East departments, including the Countryside Ranger Service, for grant applications and management plans.</li> <li>Assistance with mapping for third sector groups producing walks leaflets.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing, as requested.</li> </ul>

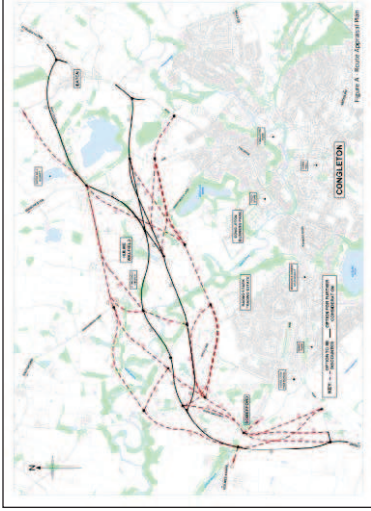



Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7 S8	T9	<p><b>The Carrs, Wilmslow, multi-user route</b></p> <ul style="list-style-type: none"> <li>Project to improve access within the Carrs public open space in Wilmslow. Externally-funded via Natural England's Paths for Communities Fund.</li> <li>Working with Bollin Valley Partnership, Parks Development, the Friends of the Carrs and Cheshire East Council Asset Management Service.</li> <li>Portfolio Holder and Committee approval secured to create nearly 900 metres of new public bridleway, protecting public access for perpetuity.</li> <li>Legal process completed to create new public right of way.</li> <li>New surfacing installed to improve access along over 1100 metres of public rights of way.</li> <li>New route ties in with Ramblers' volunteer group clearance work on public footpath in the Carrs and improved cycle route linking Lacey Green with Pownall Park areas of the town.</li> </ul> <div style="display: flex; justify-content: space-around;">   </div> <p>Flooded and wet path before</p> <p>Year-round surface after construction</p>	<ul style="list-style-type: none"> <li>River Bollin bank stabilisation works to be undertaken to protect multi-user route.</li> <li>Comprehensive signage to be developed with Friends of the Carrs to direct users along new routes.</li> </ul>

Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7	Various	<p><b>Accessibility improvements to public rights of way network</b></p> <ul style="list-style-type: none"> <li>• Various surface improvement projects, including:</li> <li>• Wilmslow restricted byway No. 12,</li> <li>• Wilmslow footpath Nos. 43, 111 and 113,</li> <li>• Disley bridleway Nos. 34 and 44A,</li> <li>• Disley footpath No. 28,</li> <li>• Aston by Budworth bridleway No. 1,</li> <li>• Aston by Budworth footpath No. 15,</li> <li>• Mobberley bridleway No. 99 'Hop Path' surface improvements using developer contribution.</li> </ul> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p>Muddy, rutted route before</p> </div> <div style="text-align: center;">  <p>After laying of 'Hop Path' surface</p> </div> </div> <ul style="list-style-type: none"> <li>• Wybunbury footpath No. 4</li> </ul> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p>Muddy, uneven path before</p> </div> <div style="text-align: center;">  <p>Year-round useable path after surfacing</p> </div> </div>	<ul style="list-style-type: none"> <li>• Projects completed.</li> </ul>

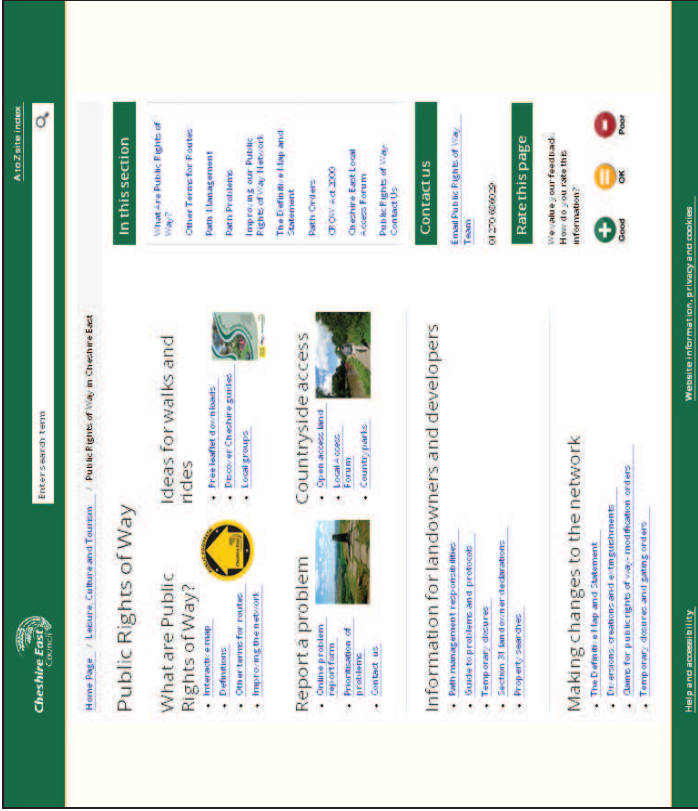
Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
S7 S8	n/a	<p><b>Local Sustainable Transport Fund</b></p> <ul style="list-style-type: none"> <li>Continued delivery of active travel infrastructure and promotional schemes focusing on smarter travel within Crewe.</li> <li>Subsequent 'LSTF2' application submitted as part of borough-wide Strategic Economic Partnership Local Growth Fund application.</li> <li>Active travel route improvement suggestions collated under ROWIP included in submission.</li> </ul>	<ul style="list-style-type: none"> <li>Delivery ongoing.</li> <li>Result of new bids awaited.</li> </ul>
H2 H3 S7 S8	n/a	<p><b>Planning applications and Local Plan</b></p> <ul style="list-style-type: none"> <li>Planning applications are commented upon from the perspective of active travel and leisure walking, cycling and horseriding, putting forward logged ROWIP aspirations.</li> <li>Developer contributions sought and secured through section 106 agreements and unilateral undertakings.</li> <li>Input from Public Rights of Way and Countryside into new Cheshire East Local Plan strategy and infrastructure plans.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing, as arising.</li> </ul>
H2 H3 S8	T37	<p><b>Crewe footpath Nos. 3 &amp; 36 Cycle Track Order</b></p> <ul style="list-style-type: none"> <li>Development of ROWIP suggestion to upgrade status of a footpath to cycle track to regularise current usage of route.</li> <li>Route runs from residential areas of Crewe and village beyond towards town centre</li> <li>Project in partnership with Cheshire East Highways and Local Area Partnership.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing legal process.</li> </ul>



Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7 S8	Various	<p><b>Road schemes</b></p> <ul style="list-style-type: none"> <li>• Input of ROWIP aspirations.</li> <li>• Assessment of legal impacts of proposals on public rights of way network.</li> <li>• Comments from the perspective of active travel and leisure walking, cycling and horseriding, on designs for road scheme including:</li> <li>• A556 Bowdon Environmental Improvement Scheme, SEMMMS A6 to Manchester Airport Relief Road, Congleton Link Road options plan</li> <li>• Congleton Link Road,</li> <li>• Poynton Relief Road,</li> <li>• Crewe Green Link Road.</li> </ul> 	<ul style="list-style-type: none"> <li>• Work ongoing.</li> </ul>
H2 H3	X15	<p><b>Discover Cheshire website</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.discovercheshire.co.uk">www.discovercheshire.co.uk</a>.</li> <li>• Website promoting walking, cycling and horse riding routes.</li> <li>• Also highlights nearby visitor economy facilities in the countryside, such as refreshment stops and accommodation.</li> <li>• Partners include Visitor Economy team, Marketing Cheshire, Cheshire West and Chester Council and the Mersey Forest.</li> <li>• Website being redeveloped to be mobile compatible and combined with other websites to act as the 'one-stop shop' for visitors to Cheshire.</li> </ul>  <p>New website screen shot</p>	<ul style="list-style-type: none"> <li>• Planned launch of redeveloped website.</li> </ul>

Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7 S8	n/a	<p><b>Local Access Forum</b></p> <ul style="list-style-type: none"> <li>• Secretariat duties for <a href="#">Cheshire East Local Access Forum</a>, a statutory body of volunteers which advises the Council and other organisations on matters relating to countryside access.</li> <li>• Priorities identified as safety on rural lanes, publicity of the Forum's work and accessibility of the countryside.</li> <li>• Registered interest party in Planning Inspectorate's consideration of A556 road scheme and extensive liaison with Highways Agency.</li> <li>• Support offered for applications to Natural England's Paths for Communities projects.</li> <li>• First annual report published and promoted.</li> </ul> <div>   </div> <p>Site visit to the Carrs, Wilmslow</p> <p>Annual report cover</p>	<ul style="list-style-type: none"> <li>• Work ongoing.</li> </ul>



Policy Ref.	ROWIP Ref.	Achievements 2013-2014	Ongoing targets 2014-2015
H2 H3 S7 S8	n/a	<p><b>Rights of Way Consultative Group</b></p> <ul style="list-style-type: none"> <li>Preparation of reports and meetings.</li> <li>Management of register of 193 volunteers and issuance of Letters of Authority for volunteers helping with waymarking and vegetation clearance.</li> <li>Implementation of improvements to website suggested by group, including path problem report form, annual strimming list and information on long term path closures.</li> <li>Initiation of project to develop web portal through which volunteers can input network survey data into CAMS GIS mapping database for use by officers initially, and, in the long term, by the public via Interactive Mapping on the Council's website.</li> </ul> 	<ul style="list-style-type: none"> <li>Work ongoing.</li> </ul>

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# **Cheshire East Local Access Forum Annual Report 2013-2014**





## Cheshire East Local Access Forum Annual Report 2013 - 2014

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### Background to the Forum

The Cheshire East Local Access Forum (CELAF) is a statutory body established under section 94 of the Countryside and Rights of Way (CROW) Act 2000, to provide advice on access to the countryside. The primary purpose of the Forum is to provide advice to Cheshire East Borough Council, and other bodies, such as Government departments, Natural England, the Forestry Commission, English Heritage, Sport England, Town and Parish Councils, on how to make the countryside more accessible and enjoyable for open air recreation, in ways which address social, economic and environmental interests.

The Forum, whose members are volunteers, meets quarterly in Crewe and Macclesfield, with site visits and sub-group meetings in between. Forum meetings are open to the public and the agenda packs and minutes are available online.

### Chair's introduction

This report covers the first year of the new CELAF's life, and I believe it shows that the Forum has quickly settled down as a capable organisation with clear planning of its activities and the energy to pursue them. What it does not show in detail is either the commitment and energy of Forum members which made it possible to do so much in the past year, or the unfailing and informed support received from Council officers and the elected member. Without their support, we would have been far less effective. As Chairman, I can only say that I regard myself as fortunate in being involved with such a strong Forum team, and that I look forward to our building in the future on the foundations we have laid.



**Bob Anderson**

Chair, Cheshire East Local Access Forum

## Priorities of the Forum

The Cheshire East Local Access Forum held its first meeting in April 2013. During the initial meetings of the Forum, members discussed the various topics of countryside access involved within the Forum's remit. The main priorities were identified as:

1. **Publicity** – to strengthen the Forum's identity and public awareness of the Forum and its work.

Against this aim, the Forum has secured publicity through local newspapers on a number of topics. This success has been of interest to the North West Regional LAF Chairs and resulted in an invitation to lead a workshop at the Northern LAF conference in 2014.



Crewe Chronicle  
16<sup>th</sup> October 2013



Knutsford Guardian website  
19<sup>th</sup> December 2013

2. **Safety on rural lanes** – the development of a campaign focussing on the improvement of safety for walkers, cyclists, horse riders and carriage drivers on rural lanes.

The Forum invited an officer from the Cheshire Police Road Safety team to discuss the Forum's priority of road safety in rural lanes. Cheshire Police have run a campaign focusing on accidents involving tractors and motorcyclists which could be used as a template for a similar campaign relating to non-motorised users and further discussions with Cheshire Police will be taking place in 2014.

3. **Lost ways** – focussing attention on and assisting progress with research into possible public rights of way that are not currently recorded on the legal record, the Definitive Map and Statement. It was decided to put this priority on hold due to forthcoming legislative changes.

4. **Walks for all** – assisting in the production of a new edition of the Cheshire East Walks for All leaflet of accessible walks in the countryside. Members are submitting suggestions for suitable walk locations and assisting in the collation the accessibility information provided in the leaflet. Further work on this topic is planned for 2014.

## The work of the Forum

During the year, the agendas of the meetings were packed with items, some generated by members themselves and some as a result of external requests for the collective expertise of the Forum to provide comment on a particular initiative. The following gives a flavour of the items on which the Forum has worked:

- The Forum wrote a letter to Reaseheath College in Nantwich expressing the Forum's disappointment that the permissive permission for a cycle path, part of the **National Cycle Network** had been withdrawn. A letter of response was received from Meredydd David OBE, Principal of the College.
- In light of the above interruption in the National Cycle Network, the Forum submitted comments related to countryside access on the impact of a **planning application** for the Kingsley Fields development in Nantwich.
- In response to a representation by a Ward Councillor, the Forum wrote to **Cheshire East Council** expressing the Forum's concerns about the allocation of Public Rights of Way resources. A letter was received back from Kevin Melling, Head of Environmental Protection and Enhancement.
- The Forum registered as an interested party with the Planning Inspectorate in relation to the **A556 Knutsford to Bowdon Improvement Scheme** and received consultations on proposals for non-motorised users within the scheme.
- Forum members **unveiled a plaque in memory of former Local Access Forum Vice-chair John Taylor** at the Bluebell Wood on the Connect 2 Crewe to Nantwich Greenway in Wistaston.



LAF members and friends and family of John Taylor, and the plaque

- Members briefed the Forum on the proposed **SEMMMS A6 to Manchester Airport Relief Road** which would provide a dual carriageway from the A6 near Hazel Grove to Manchester Airport via the existing A555. A response was submitted to the Phase 2 consultation on the scheme, outlining the Forum's discussions and concerns.

- The Forum held a site visit to the Carrs park in Wilmslow in relation to a request for support from the **Friends of the Carrs' application to Natural England for Paths for Communities** funding. The funding was being sought to create a multi-user route through the park for both leisure and active travel and had the support of a number of local groups. The Forum added its support for the application in principle, and was able to see first hand during the site visit the issues of flooding, erosion and perception of conflict between users that had been raised.



Forum members on a site visit to the Carrs park in Wilmslow

- The Forum was consulted about aspirations for the proposed **Congleton Relief Road** and **Poynton Relief Road** and the effect of the schemes on public rights of way and wider countryside access.
- The Forum was given a presentation on the **Disley Footpaths Society's Paths for Communities Fund application** to create a path between Disley railway station and an entrance to the National Trust property at Lyme Park. The Forum's support was offered to the group, although unfortunately there was no money left in the Paths for Communities fund at the time that the application was received.
- The Forum submitted a consultation response on **Cheshire East Council's Pre-Submission Core Strategy**, one of the Local Plan documents which will shape the future of development within the borough.
- The Forum was briefed on the **changes to Public Rights of Way legislation** brought in by the Growth and Infrastructure Act 2013 and the proposals within the draft Deregulation Bill.
- The Forum continued to **monitor the delivery of Rights of Way Improvement Plan** (ROWIP) projects and the annual reports of the Public Rights of Way team at Cheshire East Council.



## Update on Road Schemes

The Forum has been consulted on a number of new road schemes in Cheshire East, with the progress of each scheme summarised below, as of March 2014.

1. SEMMMS A6-Manchester Airport Relief Road.
  - scheme being developed by Cheshire East Council, Manchester City Council and Stockport Metropolitan Borough Council;
  - 2 public consultations held to which the Forum responded;
  - planning permission applied from each Council with results due March 2014;
  - anticipated public inquiry June/July 2014 with result late summer;
  - Department for Transport approval anticipated autumn 2014;
  - construction commences winter 2014/2015;
  - road due to open summer 2017.
2. Poynton Relief Road
  - scheme being developed by Cheshire East Council;
  - initial views of the Forum sought;
  - Initial alignment options outlined.
3. Congleton Relief Road
  - scheme being developed by Cheshire East Council;
  - initial views of the Forum sought;
  - public consultation undertaken January–February 2014 on 3 alignment options;
  - preferred route announcement due spring/summer 2014;
  - detailed route consultation proposed summer 2014;
  - planning application proposed autumn 2014;
  - construction start proposed 2016;
  - link road in use proposed 2018.
4. A556 Knutsford to Bowdon Scheme
  - scheme being developed by Highways Agency;
  - initial views of the Forum sought;
  - public consultation undertaken;
  - Development Consent Order (DCO) application submitted to Planning Inspectorate (PINS);
  - Forum involved in discussions about proposed changes to DCO;
  - 3<sup>rd</sup> March 2014: deadline for close of examination by PINS;
  - construction anticipated to take approximately 2 years.
5. Crewe Green Link Road
  - scheme being developed by Cheshire East Council;
  - initial views of the Forum sought;
  - planning permission obtained;
  - Compulsory Purchase Order confirmed with modifications in November 2013 – modification being the removal of spur roads and therefore removal of impact on Basford Footpath No.1;
  - advance environmental works (newt relocation) due to commence in spring 2014, with main construction works to commence summer 2014;
  - road opening, including footway/cycleways along both sides for full length is expected summer/autumn 2015.



## Membership

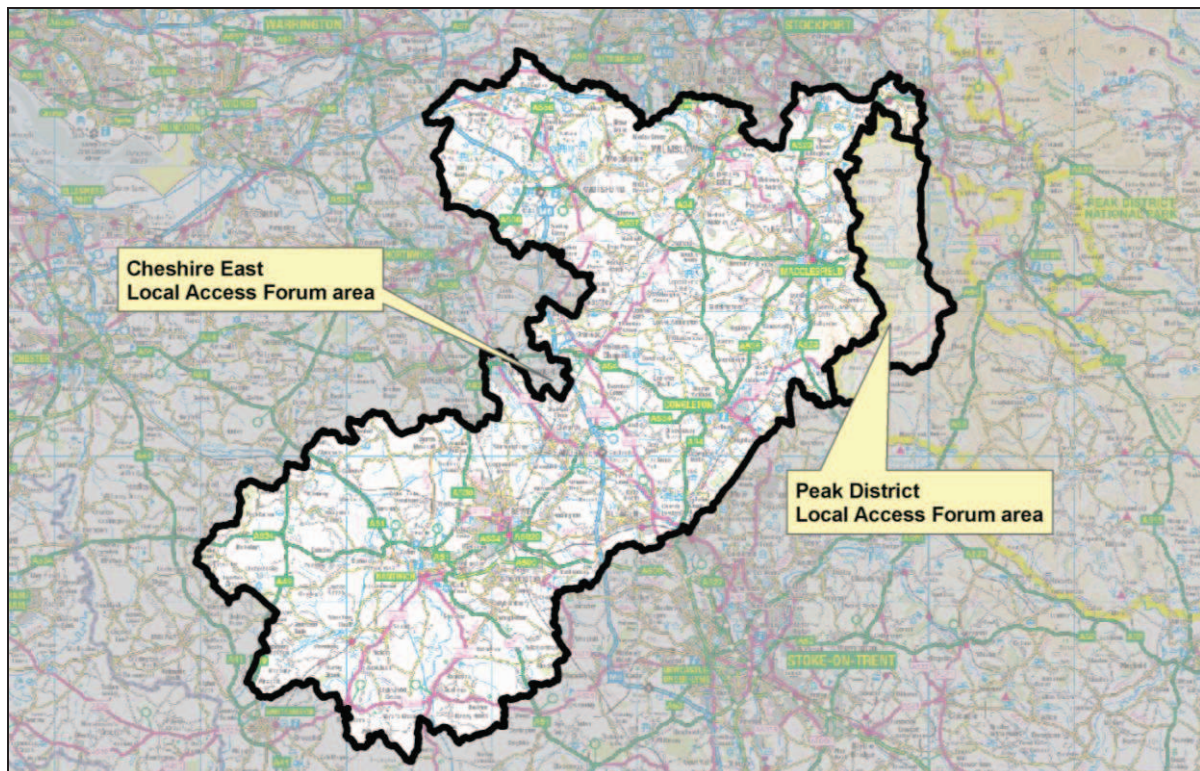
Membership of the Forum runs for a period of 3 years. The members currently appointed to the Forum, and their areas of interest, are shown below:

<b>Name</b>	<b>Areas of interest</b>	<b>Geographic area</b>
Bob Anderson, Chair	Accessibility for all, wildlife, walking	Nantwich
Councillor Rhoda Bailey	Ward Member, Public Rights of Way Committee Member	Scholar Green
Carole Bentley	Walking, information and publicity	Willaston
Chris Driver	Wildlife, conservation, planning	Acton
Pat Featherstone, Vice-chair	Walking, volunteering, health improvement	Disley
Andy Gildon	Involving local communities, running and walking	Chelford
John Handley	Land management, landscape interpretation	Wilmslow
Gillian Herdman	Walking, leisure cycling, working members of the public	Hassall Green
Dale Langham	Walking and cycling as sustainable transport	Wilmslow
Linda Rose	Carriage driving, horseriding	Great Warford
Ivor Williams	Visitor and rural economy, land management	Rainow

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## The Cheshire East Local Access Forum area

The Forum covers all of Cheshire East except for that part of the borough inside the Peak District National Park, as the National Park has its own Local Access Forum.



## Contact Cheshire East Local Access Forum

Post: c/o Public Rights of Way,  
Cheshire East Council,  
2<sup>nd</sup> Floor, Old Building,  
Municipal Buildings,  
Earle Street,  
Crewe,  
Cheshire, CW1 2BJ

Web: [www.cheshireeast.gov.uk/laf](http://www.cheshireeast.gov.uk/laf)

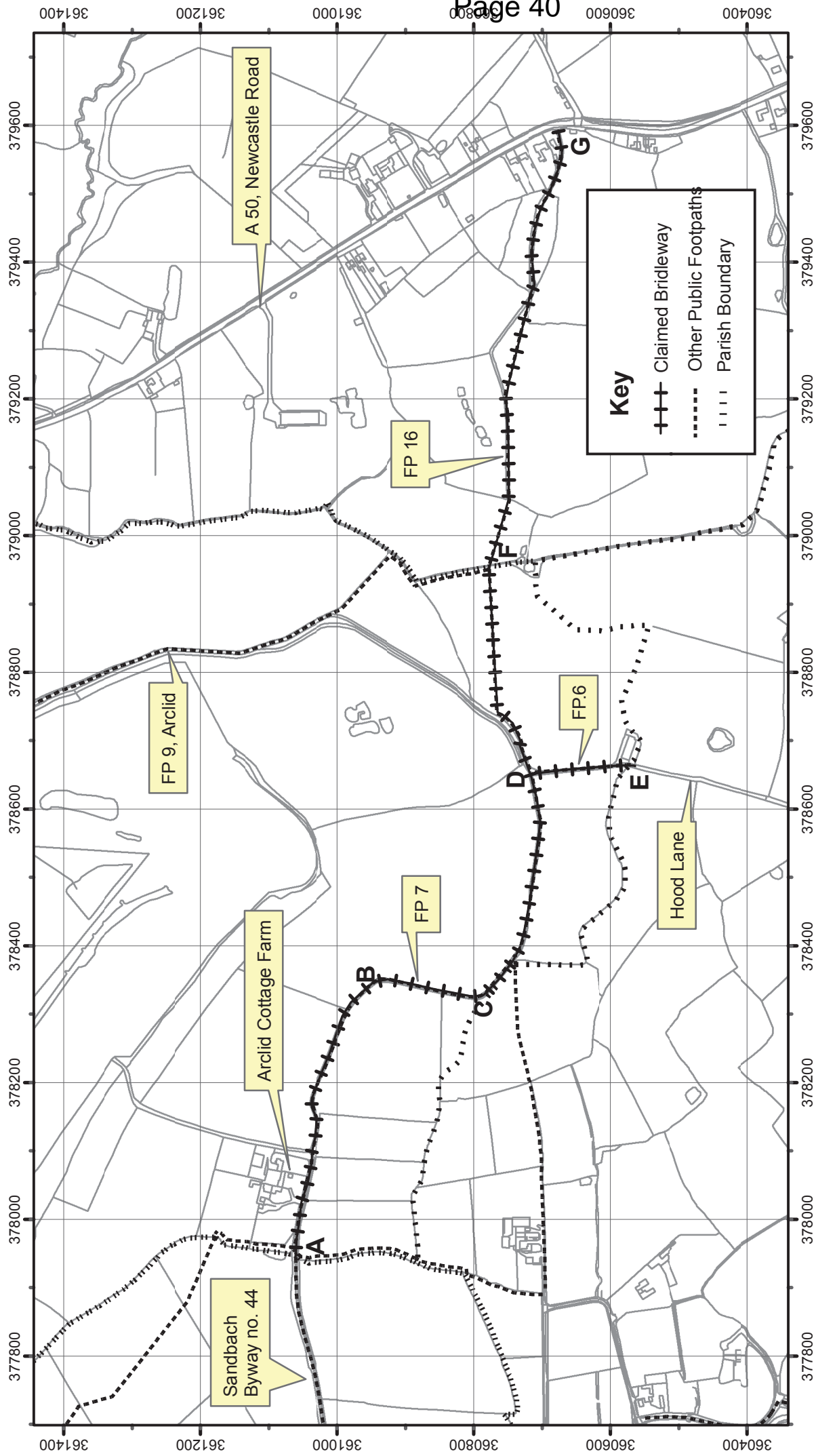
Email: [laf@cheshireeast.gov.uk](mailto:laf@cheshireeast.gov.uk)

Tel: 01270 686029

Web: On the website you can view meeting agendas and minutes, along with previous annual reports.

Meetings: The Forum meets quarterly, alternating between Crewe and Macclesfield. The meetings of the Forum are open to the public.

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# Application for DMMO to upgrade Arcclid FP's 6 & 7(pt) and Smallwood FP 16 to bridleway

Plan No.  
WCA/007

This is a working copy of the definitive map  
and should not be used for legal purposes



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Rights of Way Manager
<b>Subject/Title:</b>	Wildlife and Countryside Act 1981 – Part III, Section 53: Application to Upgrade Public Footpaths Nos.6 & 7(pt) Arclid and No.16 Smallwood to Bridleways.

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mrs P Amies of Home Farm, Hulme Walfield to amend the Definitive Map and Statement by upgrading footpaths in Arclid and Smallwood to bridleways. This includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to upgrade these footpaths to bridleways.

#### 2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record a bridleway between points D-F-G as shown on plan number WCA/007 be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights;
- 2.2 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpaths nos. 7(pt) and 6, Arclid to bridleway along the route shown between points A-B-C-D-E on plan number WCA/007.
- 2.3 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.4 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public bridleway rights subsist along the existing public footpaths. It is considered that there is insufficient user and historical evidence to support the existence of public bridleway rights along the route D-F-G on plan no. WCA/007. It is considered that the requirements of Section

53(3)(c)(ii) have not been met in relation to bridleway rights and it is recommended that this part of the application be refused.

- 3.2 However it is considered that on the balance of probabilities, there is sufficient evidence to support the requirements of Section 53(3)(c)(ii) and it is recommended that the Definitive Map and Statement should be modified to show the route A-B-C-D-E as a Public Bridleway.

#### **4.0 Wards Affected**

- 4.1 Brereton Rural

#### **5.0 Local Ward Members**

- 5.1 Councillor J Wray

#### **6.0 Policy Implications**

- 6.1 Not Applicable

#### **7.0 Financial Implications**

- 7.1 Not Applicable

#### **8.0 Legal Implications**

- 8.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.
- 8.2 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision on the Secretary of State and the authority. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.
- 8.3 The legal implications are contained within the report.

#### **9.0 Risk Management**

- 9.1 None



## **10.0 Background and Options**

### **10.1 *Introduction***

- 10.1.1 This application was registered in January 2005 and made by Mrs P Amies on behalf of the Border Bridleways Association to modify the Definitive Map and Statement by upgrading three footpaths to bridleways along the routes A-B-C-D-F-G and D-E in the parishes of Arclid and Smallwood. The route applied for is currently recorded as public footpath no. 7(pt), Arclid between points A-B-C-D-F; public footpath no, 6, Arclid between points D-E and public footpath no. 16, Smallwood between points F-G.
- 10.1.2 The applicant supplied a considerable amount of historical evidence with the application with an assessment of each of the documents and its relevance. Included were extracts from County Maps; Tithe Maps; Ordnance Survey Maps; the Finance Act; the 1950's Parish Survey and several Road and motoring maps. Also submitted were six user evidence forms from individuals who claim use of the route or part of it on horseback, one also claims cycle use and another vehicular use. The periods of use vary between 9 years and 57 years and were stated to be frequently, weekly or monthly. The earliest use was from 1918 and it extended until 1997. Three of the forms were completed in 1997, two in 2000 and one in 2004. One of the witnesses has since died, one stated that they no longer wanted to be involved and three didn't return contact after they were written to.
- 10.1.3 An application made in 1995 to amend the Definitive Map and Statement to record the connecting route to the west in Sandbach Parish led to the addition of a Byway Open to all Traffic, Sandbach no. 44. Some of the same evidence considered in that case is relevant to the current one.

### **10.2 *Description of the Claimed Bridleway.***

- 10.2.1 The claimed route comprises part of Arclid footpath no. 7 and runs from the parish boundary with Sandbach and its junction with Byway no. 44, to the west of Arclid Cottage Farm (point A on plan no. WCA/007) in an easterly direction to point B (plan no. WCA/007) it then runs in a southerly direction to point C (plan no. WCA/007) before curving easterly again to point D (plan no. WCA/007) and its junction with Footpath no. 6, Arclid, north of Hood Lane, and continues generally easterly to the Smallwood parish boundary at point F (plan no. WCA/007) and its junction with Smallwood footpath no.16. Arclid footpath no. 6 runs from point D (plan no. WCA/007) in a southerly direction to its junction with Hood Lane (UY1128) at the Betchton Parish boundary. Smallwood footpath no. 16 is the continuation of Arclid Footpath no. 7 running from point F (plan no. WCA/007) in an easterly direction to its junction with the A50 Newcastle Road at point G (plan no. WCA/007). The application is based on historical evidence and six evidence of use forms.
- 10.2.2 There are six field gates along the route up to point D, several of which are mostly left open, all of which have long latches. There is a further field gate at point E with a latch and also a stile. Along the route D-F-G there are two

stiles one with apparently a horse jump beside and the other with an open gateway. There is a further field gate with an overgrown stile to the side then an open track continuing to the A50. The fields through which the route runs are agricultural at present with some grazing however there is planning permission to undertake sand extraction which would affect the fields including the route from just before point B to point E and F. There are proposals to divert the paths affected as part of the restoration scheme. The company Archibald Bathgate Group Ltd. and the landowners D.M. Beresford & Partners Ltd currently object to the application. The land between points F and G is owned by a different landowner, Mr Bracegirdle from Smallwood who has submitted a landowner evidence form and has also lodged an objection to this application.

### 10.3 *The Main Issues*

10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.

10.3.2 The event relevant to this application is section 53(3)(c)(ii), this requires modification of the map by the addition of a right of way. The relevant section is quoted below:

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”

10.3.3 The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

10.3.4 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies, this states;-

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states



that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

- 10.3.5 The only apparent challenge to use refers to a sign put up in 1993 at the start of what is now Sandbach Byway no. 44. This action led to the application to add that route up to the Arclid parish boundary (point A on plan no. WCA/007) which resulted in the addition of the Byway. The signs were put up at each end of Byway no. 44 and stated ‘Private Road, No Footpath, No Bridleway’ This would not have challenged users approaching from the east along Arclid Footpath no.7 but may have done so for those approaching from Sandbach. In which case the relevant twenty year period would be 1973 to 1993. Of the six evidence of use forms, three were completed in 1997, two in 2000 and one in 2004. This seems to suggest that it was the investigation of the status of the connecting route in Sandbach which led to witnesses stating their use of the connecting footpath network. Alternatively if we consider that in this case there has been no specific challenge to use; that the matter of status has arisen following the application to upgrade the route under the Wildlife and Countryside Act 1981 made in 2005; then there is no date of challenge and the date that the application was made can be taken as the date from which the 20 year period can be retrospectively calculated. Therefore in this case the relevant period would be 1985 to 2005.
- 10.3.6 In this case there is some evidence of use on horseback prior to 1993; three witnesses entire period of use was before this time and three claim use up to 1997 when they filled in the form. It has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions (2002)*.
- 10.3.7 In the case of *Godmanchester Town Council, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

*“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.*

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of user, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not

have to be continuously demonstrated throughout the whole twenty year period. None of the witness evidence indicates that they have been challenged or been made aware that the route was a footpath only. One witness who also rode along the continuation of FP 9, Arclid to the north was challenged by the landowner Mr Beresford, but this witness did not come forward for interview so we do not know where along the route or when this occurred. It may have been in closer proximity to Arclid Hall Farm where Mr Beresford resided.

- 10.3.8 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. There are currently long latches on some of the field gates between points A and D on Plan no. WCA/007 and it was noted that some of the field gates were propped open on the occasions of site visits. Two witnesses recall there being 'claphatches' or field gates that were accessible for horseriders throughout the claimed route. There are currently stiles alongside several of the gates apart from one at point F on plan no. WCA/007 where there is a wooden removable pole/barrier to the side, which could be a horse jump. The landowner at this location is Mr Bracegirdle and his solicitor has stated that the owner has given permission for a few individuals and the hunt to use this route on occasion.

#### 10.4 *Consultations*

- 10.4.1 Consultation letters were sent to the local Councillor, Arclid, Betchton and Smallwood Parish Councils and landowners, tenants, user groups and statutory consultees in November 2012.
- 10.4.2 No response was received from Councillor Wray, the local member, or from any of the three Parish Councils
- 10.4.3 The landowners for the area in Arclid, D.M Beresford and Partners contacted this office and Mr D Beresford and his mother Mrs Beresford came in to view the application file. They then responded to object to the application and to request more time to present further evidence. They have lived at Arclid Hall Farm since 1968 and believe that the evidence submitted is not sufficient to support the upgrading to bridleways. No further information has been received from them.
- 10.4.4 A letter was received from Poole Alcock Solicitors who responded on behalf of the landowner, Mr Bracegirdle, for the area in Smallwood that Footpath 16 runs across, lodging an objection to the proposal. They responded that they did not feel the Council could rely on an application lodged over 6 years ago and supported by 6 witnesses. Their client has been in possession of the land since 1923 and believes the route is a footpath only and has never been used as a bridleway. He has given consent to a number of people to ride

down footpath no. 16, notably his granddaughter, but anyone else riding along it has been doing so without consent and committing an act of trespass. He has also authorised use of the route by the hunt.

- 10.4.5 As previously mentioned a large area of land covering footpaths nos. 6 & 7 in the ownership of Mr Beresford is subject to a long lease to the sand extraction company Archibald Bathgate Ltd, which has secured planning permission to work the site. Sloane Mead consultants acting on behalf of the lessees responded to formally object to the proposal. Their clients are fully aware of the existence of the footpaths and have put in place arrangements to have the paths diverted under the provisions of section 261 of the Town & Country Planning Act 1990 (for mineral extraction purposes). The objection is made on the grounds that upgrading the footpaths to bridleways could introduce new objectors to these proposals to divert the paths increasing the risk of delays to securing the legal orders and consequently having an adverse impact on the phasing of the sand extraction process and their clients business. Arclid Quarry, of which this is an extension, is of national significance to the economy in supplying silica sand and foundry sand to the building industry.

It is also stated that given that this application was made in 2005, it should have been dealt with much sooner and that it is premature and inappropriate to upgrade these footpaths at this time. They also believe that the upgrade would serve no useful purpose as it does not link to a route that can be used by horseriders and cyclists beyond Arclid Cottage Farm.

- 10.4.6 An adjacent landowner Mr Wetherby from Betchton made contact to say that his land was not affected by the proposal but he would like to be kept informed of progress.
- 10.4.7 Matthias Bunte from the Cyclists Touring Club made contact to support the proposed upgrades although as the routes are across open fields they are not necessarily suitable for cycling use.

#### 10.6 *Investigation of the Claim*

- 10.6.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of historical evidence and user evidence from 6 witnesses. Copies of the following documents were supplied with a typed submission setting out their significance as considered by the applicant; the County Maps of Greenwood (1819), Swire and Hutchings (1830) and Bryant (1831); the Arclid, Betchton and Smallwood Tithe Maps and Apportionments ( 1840 and 1841); the Ordnance Survey 1" to 1 mile (1842) , O.S. 6" to 1 mile and 25" to 1 mile 1<sup>st</sup> edition Maps (1872) ; the O.S. 25" to 1 mile 3<sup>rd</sup> edition Map (1909); O.S. sheets 25" to 1 mile (1969); the Finance Act Plan, Book of Reference and Field Book entries (1910, 1913 & 1914); the National Parks and Access to the Countryside Act Parish Surveys, Arclid and Smallwood (1952) and Bartholomew's Road Map (1937) and Road Atlas Extracts (1957, 1961 & 1977).

- 10.6.2 In addition to the submitted evidence a detailed investigation of the available historical documentation has been undertaken to try and establish the history and original status of the claimed route. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 1**.

10.7 *Documentary Evidence*

The documents referred to are considered by collective groupings.

*County Maps 18<sup>th</sup>-19<sup>th</sup> Century*

- 10.7.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.
- 10.7.2 The route is shown on *Greenwood's Map (1819)* continuing from Sandbach Byway no. 44 to approximately the junction of Footpaths nos. 6 & 7 (point D on plan no. WCA/007). The route is shown bounded on both sides and this is indicated as a 'cross road – through route' on the key but it appears to have no connection going easterly. *Swire and Hutching's Map (1830)* shows the route as far as a collection of buildings, presumably Arclid Cottage Farm, but no further. On *Bryant's Map (1831)* the claimed route is shown throughout and labeled 'Bridle Road'. However the section running easterly from approximately just beyond point D (on plan no. WCA/007) is not on the same alignment as the current Footpath no. 16 but runs more to the north to join the current A50. The section to the south, Footpath no. 6, that joins Hood Lane is also shown and labeled Bridle Road.

10.7.3 *Arclid Tithe Map and Apportionment 1840*

Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In

the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

- 10.7.4 The Tithe Map of Arclid dated 1840, sealed as a first class map, shows the full extent of Footpath no. 7, coloured ochre. The route runs from the Sandbach Parish boundary bounded and numbered as a separate apportionment; initially as number 136 then no. 137. Both apportionments are owned by John Barrington and are described in the apportionment as 'Road'. There is no connection to Footpath no. 6 and Hood Lane on this map. The route to the east of point D (plan no. WCA/007) doesn't concur with the current route of Footpath no. 16 but instead mirrors the way it is shown on Bryant's Map, as previously discussed.

10.7.5 *Tithe Map and Apportionment of Smallwood 1840*

On the Smallwood Map the specific route of Footpath No. 16 is not shown. A route that matches it the most closely is shown as a pecked line, double pecked line, then bounded on one side and the final section bounded on both sides to its junction with the current A50. It runs across Flag Moss which is listed as Open Waste in the Apportionment. The route is entirely within separate apportionments belonging to several different landowners listed under Freeholders of Smallwood Township. None of these refer to a road of any description or through route. An enclosed route further to the north of Hood Lane is shown on this map, it is not coloured nor does it have a separate apportionment number. It is open throughout and follows the same alignment as the route shown on Bryant's Map.

10.7.6 *Tithe Map and Apportionment of Betchton 1841*

The Betchton Tithe Map is coloured and shows the length of Hood Lane running from Dean Hill in the south in a northerly direction along the current alignment. It is excluded from adjacent apportionments and does not have an apportionment number of its own; it is also open at the parish boundary leading into Arclid. A branch running off it to the west is also coloured and is a cul de sac. It is numbered and recorded as an occupation road.

*Ordnance Survey*

- 10.7.7 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

10.7.8 *Ordnance Survey Hill Drawings 2 inches to 1 mile*

These are sketches that formed the basis of the 1 inch to 1 mile maps published a few years later. The sketches show an enclosed route from point A (Plan no. WCA/007) with several solid lines across the route possibly indicating gates and largely in the same locations as the present ones; the route continues to the south to join Hood Lane which is named, this section is unbounded to the east. The route continuing easterly again follows the more northerly route depicted in the Tithe Maps and Bryant's Maps. The route that is Footpath 16 is not shown across the first field in an easterly direction, after which there appears to be a track unbounded to the south and then enclosed to its junction with the A50. This is the same route shown across Flag Moss on the Smallwood Tithe.

10.7.9 *The Ordnance Survey 1 inch to 1 mile 1842*

The route is shown practically identically to the sketch maps with the solid lines across the route, mostly gone apart from the one at the parish boundary on Hood Lane between Arclid and Betchton.

10.7.10 *O.S. 1<sup>st</sup> Edition County Series 25" to 1 mile 1872*

The route is shown on this map the same as its present day alignment. In Arclid parish the route is numbered 126 which is identified as 'Road' in the corresponding Book of Reference. Hood Lane in Betchton Parish is numbered 202 and referenced 'Road' and in Smallwood the eastern end of the route is numbered 448 and identified as 'Road'. The central section of the route in Smallwood is not referenced separately but runs through fields described as Arable.

10.7.11 *O.S 2<sup>nd</sup> Edition County Series 1898*

The route is shown almost exactly the same as the 1<sup>st</sup> edition; one difference is that the cross field part of the northern section of footpath no. 6 now has a field boundary to its western side.

10.7.12 *O.S. 3<sup>rd</sup> Edition County Series 1909*

The route is shown in a similar way to the previous editions. The applicant refers to the spot heights that are marked along footpath no. 6 and the relevant section of footpath no. 7 and then footpath no. 16 running easterly. In an Ordnance Survey manual dated 1975 (a copy was included with the application) it is stated 'as a by product of cyclic levelling, the 1:1250 and 1:2500 series have spot heights printed along selected roads....'

10.7.13 *O.S. revised New Series 1: 63,360 (1 inch: 1 mile) 1902-3*

On this map footpath no. 7 up to the junction with footpath no. 6 and footpath no. 6 to the Betchton boundary is shown as 3<sup>rd</sup> class metalled road. For the purposes of the Discovering Lost Ways project, the Research Handbook

volume 2, considers this depiction to be neutral evidence of the status of public rights of way.

#### 10.7.14 *Estate Sale Plans*

##### *Betchton Cottage Sale Details and Plan 1904*

These sale plans and particulars are from the disposal of part of the Crewe Hall Estate. In the description of the lot to be sold it describes the farm as situate on the highway leading from Betchton to Arclid; this does not refer to the claimed route however on the Sale Plan the eastern edge of the land included in the lot to be sold abuts a section of footpath no. 7 which is shown coloured and labelled 'road' and also annotated 'from Smallwood'.

##### *Arclid Cottage Farm Sales Plan and Schedule 1905*

This sale plan covers an area of land that incorporates the majority of the claimed route, from points A to D and E and across to F (on plan no. WCA/007). On the plan the route of footpath no. 7 to its junction with footpath no 6 (point D) is indicated on the schedule as 'roadway' using three different plot nos. The link of footpath no. 6 to join Hood Lane is not shown at all, although the continuation beyond the parish boundary with Betchton and outside the area of sale is shown in a like manner to the roadway. The continuation of footpath no. 7 (point D to F) is annotated as Footpath.

#### 10.7.15 *Congleton Rural District Council Minutes 1897 - 1945*

Between 1894 and 1929, Rural District Councils were responsible for highway maintenance in their respective areas so any issues or problems during that time could be recorded in the Council minutes.

There are a few references to what might be this route and some clear references to Hood Lane in Betchton. The latter specifically from a series of minutes in 1902/3 following a letter from a number of ratepayers bringing attention to the bad state of repair of the road called Hood lane leading from Dean Hill to Arclid. A committee appointed to inspect this road 'found that it was not a thoroughfare and were told that local persons had carted stone in times gone by and the workmen of the Highway Board had put them on the road. They did not recommend the Council to repair the road'. The Clerk was requested to report upon the legal position of the Council with reference to the road and subsequently it was minuted that the Clerk did not think the lane was a public carriageway repairable by the Council but that it was a bridle path and footpath and the extent of the liability of the Council was to keep it in repair as such. The minutes continue to state that the original complainants can refer the matter to the Parish Council who may choose to repair it under provisions contained in the Local Government Act 1894. The next entry on this matter is a letter from the County Council advising that they had received a letter from the clerk of Betchton Parish Council complaining of the Rural District Council's failure to maintain the road and asking for comments. A committee from the County is then appointed to meet on site and consider the matter after which they serve an order on the District Council stating ' this

road to be put in such repair as the County Surveyor may, having regard to the nature of the traffic along the road and to all the circumstances of the case, consider sufficient'. The final entry on this subject is a minute saying that the County Council Surveyor had inspected Hood Lane and approved of the work done.

A separate minute from 1901 refers to a letter from Smallwood parish Council complaining of the dangerous state of the pit against the footpath in the field occupied by Mr Marrow in Arclid. By reference to the Finance Act Field Book record of 1910, you can deduce that Mr Marrow occupied plot 35 which was most of the fields between points A and F (on plan no. WCA/007) north and south of the route. So it is likely that the claimed route is the footpath referred to.

A later entry in 1933 refers to a letter received from J. Thorley at Arclid Cottage Farm stating that the claphatches on this footpath are in a bad condition and he believed that they had been provided by the Council. The minutes state that Mr Thorley be informed that the Council disclaim all responsibility for the repair of the claphatches on the path referred to. This cross references with one of the witness statements which refers to the claphatches along the route that made it useable on horseback.

#### 10.7.16 *Finance Act 1910*

The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.

Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.

The claimed route covers three separate sheets. Apart from the most easterly section which is excluded from hereditaments, the rest of the route is included in several hereditament numbers. From the field books held at Kew and viewed by the applicant, copies enclosed with the application, it can be seen that from the Arclid Cottage end the lot is numbered 35 and has a deduction of £30 made for 2 footpaths, 4700ft long. This plot goes as far as the Smallwood Parish boundary. This length correlates to the claimed section of Footpath no. 7 and the length of footpath no. 6. Plot number 715(pt) which encompasses the claimed route across the two fields to the east of the Arclid/ Smallwood parish boundary; has a deduction of £18 for footpath across arable land 1330 ft long. This correlates to the claimed route, Smallwood footpath 16 where it runs through these fields. The eastern



section of this route up to its junction with the A50 is excluded from hereditaments. Plot number 719 encompasses the eastern section of the northern route shown on the Smallwood Tithe Map; there is a deduction for public user of £19 and on the working copy of the plan, written in pencil, is 'Right of Way'. This route is not the line of footpath 16, Smallwood.

The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; although not necessarily status in some circumstances. Planning Inspectorate Consistency Guidelines state that exclusion from hereditaments is generally considered as an indication of public rights higher than footpath. (Section 11 Planning Inspectorate Consistency Guidelines April 2010).

10.7.20 *Footpath Map – Congleton – Internal Document not dated presumed date 1930's*

This is a bound map the provenance of which is not entirely known. It is presumed to be an internal reference document possibly belonging to the District Council. On this map only part of the route is shown which is from point D easterly to the end of the second field boundary. It is shown by a red line which is referenced as 'Footpaths which if repaired at all, have been done by the owners or occupiers of the land through which the footpaths run'. This would correlate with a minute of the Rural District Council from 1909 that states since the passing of the 1894 Act (Local Government as referred to in 10.7.15) the District Council has declined to repair footpaths not by the side of highways.

10.7.21 *Definitive Map Process - National Parks & Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.

The survey for footpath nos. 6 & 7, Arclid, are recorded on one sheet and the route is identified as footpath however the details in the general description describe field gates, bridle gates, a gap as well as one stile at each junction. There is a field gate wired up at the junction with Hood lane. The route is described as a cinder road then a cinder and earth track and where it runs along the field edge there is a strip left unploughed. Annexed on the map submitted by the local footpath society, who also contributed to the survey, is CRB which is generally accepted to mean Cart Road used as Bridleway. Smallwood footpath no. 16 is described as Bridleway on the survey report and lists three Bridle gates at each field boundary. In the description it also states: 'Path is used mainly by horses as a short way to Sandbach Heath'. The applicant considers that there would have been no reason to put in bridle gates or to leave a 5ft gap at one point if the track was merely used as a footpath.

The Draft Map was the first step towards compiling the survey information into what would become the Definitive Map. On this map the route is shown in the same way as on the survey maps and annotated the same with field gates, bridle gates etc. The route on the Smallwood Draft map is also shown the same as the survey map; the Draft Statements record both routes as footpath. The subsequent provisional and definitive maps show the routes as footpaths.

10.7.22 *Road Atlas Maps*  
*Bartholomew's Road Map 1937*

The applicant also submitted several extracts from Road Maps as evidence. This edition which was supported by the Cyclist's Touring Club so generally believed to show routes open to cyclists, shows a continuous route from point A (plan no. WCA/007) to point E and continuing southerly down Hood Lane. This is depicted as 'Other Road'. There is no route shown easterly into Smallwood to the A 50.

*Road Atlas of Great Britain 1957*

All of claimed route is shown as an uncoloured road on this map. The key states that uncoloured roads do not necessarily imply that these are suitable for wheeled traffic. The applicant states that the majority of surrounding uncoloured roads are now bridleways, byways or minor roads. The 1961 and 1977 versions are supplied showing exactly the same depiction. They are all reprints of the original from 1940.

10.7.23 *1996 Definitive Map Modification Application*

The application to modify the Definitive Map to record Sandbach Byway no. 44 as mentioned in paragraph 10.1.3 was determined by Cheshire County Council's Rights of Way Committee in 1996. As part of the evidence supporting the application in the report, reference was made to a conveyance held in the deeds of Reynold's Farm dated 1937. This farm owned land bordering the claimed route, now Byway no. 44, which was described as 'the highway leading from Sandbach to Smallwood'.

10.8 *Witness evidence*

10.8.1 Six user evidence forms were submitted in total on standard user evidence forms, one of these was interviewed, one has since passed away, another one made contact to say they no longer wanted to be involved and nothing was heard after trying to contact the other three. Given the period of time that has expired since they completed their forms it is quite likely that they have moved from the addresses given. A chart illustrating the user evidence is attached as **Appendix 2**

10.8.2 In order to show that public equestrian rights have been acquired along the length of the claimed route through usage, a twenty year period must be identified during which use of the route by horseriders has been established.

This period is usually taken as the twenty years immediately prior to a challenge to that use. In section 10.3.5 it is discussed that this case may rely on the challenge made to use on a connecting route Byway no. 44, Sandbach. As the witness forms were completed in 1997 and 2000 the indications are that they were in response to the challenge made in 1993 and the subsequent application to register Byway no. 44 as a public right of way. Taking this to be the case, the relevant period would be 1973 to 1993. This would make more sense of the witness evidence as only one form dated 2004 is close to the application date of 2005.

- 10.8.3 Of the six user evidence forms submitted, all six claim to have ridden the route with a horse, one has also cycled and another used the route with a vehicle. Different routes have been used by the witnesses; two have used the whole of the claimed route, three have used a route incorporating A-B-C-D to E and the sixth one has used the route from Hood lane and then E-D-F-G. Use of the route varies from 9 years to 57 years. Three of the user's period of use falls within 1973 to 1993. Frequency varies between 2/3 times per week to monthly.

The witness who has since died claimed use of the route from 1918 to 1975.

#### 10.8.4 *Witness Interviews*

Only one witness was interviewed for this claim; Mr J Singer. His knowledge of the route and the local area is quite extensive and it was his father who had used the route since a child in 1918. Mr Singer has considerable memories of using the route with his father. His grandfather had moved to the area from Leek in 1906 and they had moved their animals and carts along the claimed route from Smallwood. He was also aware that Jackson's, a building firm from Smallwood who built the chapel in Sandbach Heath pre First World War had used this route to travel and transport supplies during construction. His uncle worked for this same firm and cycled from Sandbach Heath to Smallwood via the claimed route on a daily basis. He recalls days when they rode across this way as part of their journey to visit relatives in Astbury. Mr Singer senior kept horses all his life and would ride and take a cart across this route up until about 1975. In 1955 Mr Singer was called away from the area to do National Service and didn't return to live here again until 1992.

- 10.8.5 The evidence supplied above is very detailed and specific to the claimed route however it doesn't cover the period between 1973 and 1993. The use that does cover some of this period i.e. from the early 1980's to 1997 does not refer to the whole of the claimed route but incorporates the section between A-B-C-D-E, footpaths nos. 6 & 7, Arclid. Use of the section covering footpath 16, Smallwood is from an earlier time period, concentrated around the 1940's and 1950's.

## 10.9 *Conclusion*

- 10.9.1 The claimed route has appeared on a number of historical documents of good provenance. The Tithe Maps for Arclid and Betchton show a consistent alignment corresponding to footpaths 6 & 7, Arclid with the route shown coloured and bounded on both maps. It is recorded as 'road' on the Arclid map. The route on the Smallwood Tithe map is not the exact alignment of footpath no. 16 and is not separately described but included in surrounding hereditaments. The route appears in a similar way on three of the County Maps and on Bryant's map footpaths 6 & 7 Arclid are annotated Bridle Road. The route easterly is not clearly depicted. These early records raise a reasonable presumption that at least part of the route is a through route and of a higher status than footpath.
- 10.9.2 The 1<sup>st</sup> Edition Ordnance Survey from the 1840's is consistent with the Tithe and County maps clearly depicting a bounded lane along the line of footpaths 6 & 7 with the continuation easterly not shown across the first field. The County series O.S. maps from 1872 begins to show a pecked double line for the easterly extension along the route of what is now footpath no. 16. The alignment of the Arclid section is mostly shown as a bounded lane and described as road in the book of reference.
- 10.9.3 Evidence from sales catalogues from neighbouring properties in the early 1900's provides evidence of the believed status of the adjoining route. It is annotated road along the section of footpath no. 7 and the continuation along Smallwood no. 16 is annotated as footpath on one of the sales plans.
- 10.9.4 The Finance Act can be considered to be good supporting evidence of the existence of a public right of way dependent upon what is recorded. The route is shown included in surrounding hereditaments and the field books record exemptions for footpaths.
- 10.9.5 The minutes of the Rural District Council suggest that the route between Dean Hill and Arclid was considered to be a road. Whilst the detail of the minutes relates to Hood Lane and it is not known to what condition the road was repaired; it was accepted that it was at least a bridleway and was publicly repairable.
- 10.9.6 There is additional evidence of a presumption of the use of the route as a bridleway in the original survey reports which led to the compilation of the Definitive Map. These were written by local people with knowledge of the local area and they indicate that the path was capable of being used by horseriders even if it was recorded as a footpath at the next stages of the Definitive Map process.
- 10.9.7 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. The balance of evidence supports the allegation that a bridleway subsists along the route A-B-C-D-E (Plan no. WCA/007) however it is considered that there is insufficient historical and user evidence to support the existence of

bridleway rights along D-F-G (on plan no. WCA/007). Therefore it is considered that the requirements of Section 53(3)(c)(ii) have been met for that part of the claimed route described and it is recommended that this section should be the subject of a Definitive Map Modification Order to upgrade footpaths nos. 6 & 7(pt), Arclid to bridleway and thus amend the Definitive Map and Statement.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Clare Hibbert  
Designation: Definitive Map Officer  
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Email: [clare.hibbert@cheshireeast.gov.uk](mailto:clare.hibbert@cheshireeast.gov.uk)

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**Application No. CO/8/33****Claim for Upgrading of Footpaths to Bridleway, Footpath No. 7 (pt), Arclid;  
Footpath No. 6, Arclid and Footpath No. 16, Smallwood  
Documentary Evidence**

## Glossary of terms

PROW Unit = Public Rights of Way unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

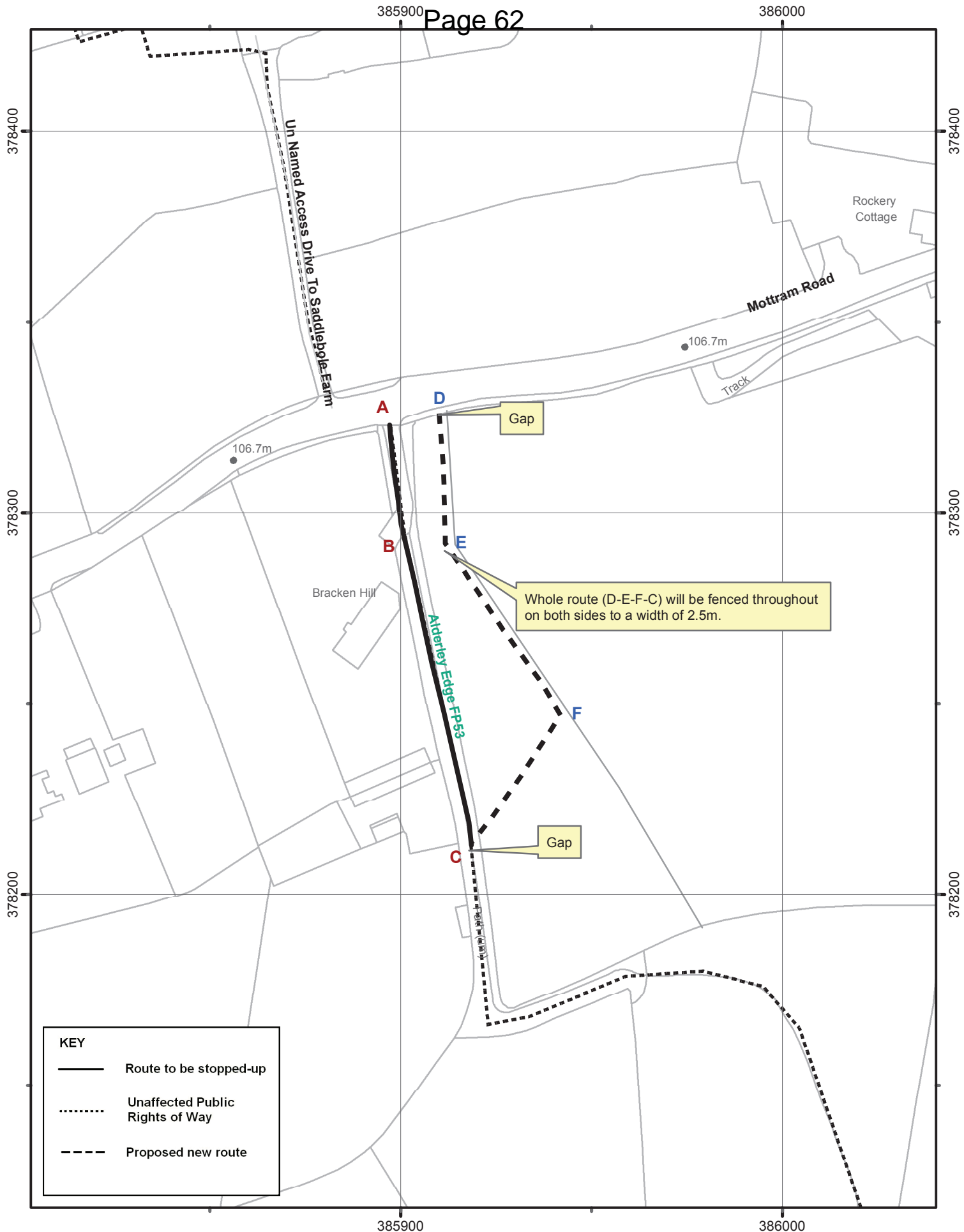
<b>Primary Sources</b>	<b>Date</b>	<b>Site shown/ mentioned</b>	<b>Reference Number</b>
<b>County Maps</b>			
Burdett PP	1777	Yes	CRO PM 12/16
Greenwood C	1819	Yes	CRO PM 13/10
Swire and Hutchings	1830	Yes	CRO PM 13/8
Bryant A	1831	Yes	CRO M5.2
<b>Tithe Records</b>			
Arclid Tithe Map	1840	Yes	CRO EDT 18/1/2
Arclid Tithe Apportionment	1840	Yes	CRO EDT 18/1/1
Betchton Tithe Map	1841	Yes	CRO EDT 44/2
Betchton Tithe Apportionment	1841	Yes	CRO EDT 44/1
Smallwood Tithe Map	1840	Yes	CRO EDT 359/1/2
Smallwood Tithe Apportionment	1840	Yes	CRO EDT 359/1/1
<b>Ordnance Survey Maps</b>			
O.S. Drawings 2" to 1 mile	1840	Yes	CRO OSD Sheet 80 F4
O.S. Map 1" to 1 mile 1 <sup>st</sup> Edition	1842	Yes	PROW
25" 1 <sup>st</sup> Edition  Surveyed 1872	1872	Yes	PROW Unit OS 25" 1 <sup>st</sup> Edition & CRO L 6,7 & 11
O.S. Book of Reference Parish of Sandbach, Township of Arclid & Township of Betchton	1875	Yes	CRO Searchroom
25" 2 <sup>nd</sup> Edition	1899	Yes	PROW Unit OS 25" 2 <sup>nd</sup> Edition

25" 3 <sup>rd</sup> Edition	1909	Yes	PROW Unit OS 25" 3 <sup>rd</sup> Edition
<b>Finance Act</b>			
Working Sheet	1909	Yes	CRO NVB/ 50-7, 50-11 & 50-12
Valuation Book	1910	Yes	CRO NVA 2/8, 2/49 & 2/8
Field Books	1910	Yes	TNA IR58 24180 & TNA IR58 24173
<b>Quarter Sessions</b>			
Index	1782- 1967	No	CRO QAR 107-109
Buxton, Macclesfield, Congleton & Crewe Railway	1845	No	CRO QDP 217
<b>Sale Plans &amp; Particulars</b>			
Sale of Betchton Heath Cottage	1904	Yes	CRO 135816
Sale of Arclid Cottage Farm	1905	Yes	CRO 224048
Arclid Sales Catalogue	N.D.	No	CRO 135695
<b>Other Maps</b>			
Arclid Hall Farm	18 <sup>th</sup> Century	Yes	CRO DDX 139
Map of the Estate of John Crewe in the Parish of Sandbach	1767 1849	Yes	CRO DCR 59/33/1,2 & 3
Crewe Hall Estate	1917	Yes	D 7818/3
<b>Local Authority Records</b>			
Northwich Highway Board Minutes	1894 - 1899	No	CRO LRC/78/1
Congleton Rural District Council Minutes	1897 - 1945	Yes	CRO LRC 1/5-14
Arclid Parish Council Minutes	1894 - 1987	Yes	CRO PC 119
Footpaths Map - Congleton	1930's	Partly	PROW Unit
Green Book	Pre 1950's	Partly	PROW Unit
Walking Surveys	1951	Yes	PROW Unit



## Appendix 2 User Evidence

			1920	1930	1940	1950	1960	1970	1980	1990	2000
Mr J Singer Snr	Use by Horse	1918									1975
Mr J Singer	Use by Horse	1940									1955
	Use on Bicycle	1940									1955
Ms AM Banner	Use by Horse	1987									1997
Ms E Hall	Use by Horse	1981									1997
Mr P Pryor	Use with a vehicle	1984									1997
Mr P E Ball	Use by Horse	1945									1954



1:1,267

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath No. 53 (part) Parish of Alderley Edge)  
Public Path Diversion Order 2014

Plan No.  
HA/094



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 53 (part), Parish of Alderley Edge

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.53 (part) in the Parish of Alderley Edge. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.53 Alderley Edge by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/094 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will improve privacy and security to applicant's property. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Alderley Edge

#### **5.0 Local Ward Members**

5.1 Councillor Frank Keegan

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to

confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr & Mrs P Gouge of Bracken Hill, Mottram Road, Alderley Edge, Cheshire, SK9 7JF requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 53 in the Parish of Alderley Edge.
- 10.2 Public Footpath No. 53, Alderley Edge, commences at its junction with Mottram Road at O.S. grid reference SJ 8591 7833 and runs in a generally southerly direction along the access drive of the property, Bracken Hill to then pass it to the east along a narrow enclosed path that continues in the same southerly direction and then in a generally east, north easterly direction before leaving the enclosed path to enter onto woodland owned by the National Trust. At this point, it follows an easterly direction which gradually curves to a generally southerly direction to the parish boundary where it terminates at O.S. grid reference SJ 8601 7802. The section of path to be diverted is shown by a solid black line on Plan No. HA/094 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-F-C.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr Gouge. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.4 Referring to Plan No. HA/094, the section of Public Footpath No. 53, Alderley Edge to be diverted runs along the access drive of the applicant's property, Bracken Hill (points A-B), and then passes through a gap in a hedge (point B) onto an earthen path which it then follows adjacent to the property boundary in a generally south, south easterly direction to terminate at point C just after passing the final outbuilding of Bracken Hill.

Currently, this section of path takes users up the steep and narrow access drive that leads to the applicant's property and grounds. Users leave the drive just before entering the grounds as they pass through the gap to follow the property boundary.

The use of the drive and the closeness of the woodland path to the property give rise to concerns about privacy and security. Furthermore, there are safety concerns about users and vehicles on the narrow access drive. Diverting this section of path into an adjacent field to run along the eastern

field boundary would take users away from the property and the drive to improve privacy and security for the applicants.

Further to this, the applicant has planning permission to develop a natural garden within the field (area bounded by points A-B-C-F-E-D-A) and it is the intention in future to apply for change of use of this land to allow a more landscaped private garden. Consequently, the proposed diversion has been aligned to skirt the boundary of this development area (points D-E-F-C) so that users would not be required to pass through it from point D directly to point C.

- 10.5 The proposed new route (D-E-F-C on Plan No. HA/094) would start from Mottram Road (point D). It would then follow the eastern fence line in a southerly direction to point E and then in a south easterly direction to point F from where it would bear in a south westerly direction to cross the field to terminate upon joining the current route at point C.

The amended route would have a gap at point C and a pedestrian gate at point D to protect users at the junction with Mottram Road. It would be enclosed to a width of 2.5 metres and a stoned surface provided within this width.

In summary, the proposed new route would follow a line that would:

- Eliminate the need for users to negotiate vehicles on the steep narrow access drive (points A-B).
- Enable users to pass the property without needing to pass through private grounds.
- Allow greater privacy and security for the applicant.

This diversion would be made in the interests of the landowner.

- 10.6 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Alderley Edge Parish Council has been consulted and any comments will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Peak and Northern Footpath Society, East Cheshire Ramblers and Alderley Edge and Wilmslow District Preservation Society registered that they have no objections to the proposal although requested that a gate should be installed at the junction of the diversion route with Mottram Road and that the footpath should be surfaced to combat boggy sections that form in the field during wet weather. No other comments were received.

10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.

10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not significantly less convenient than the "old" route.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Marianne Nixon

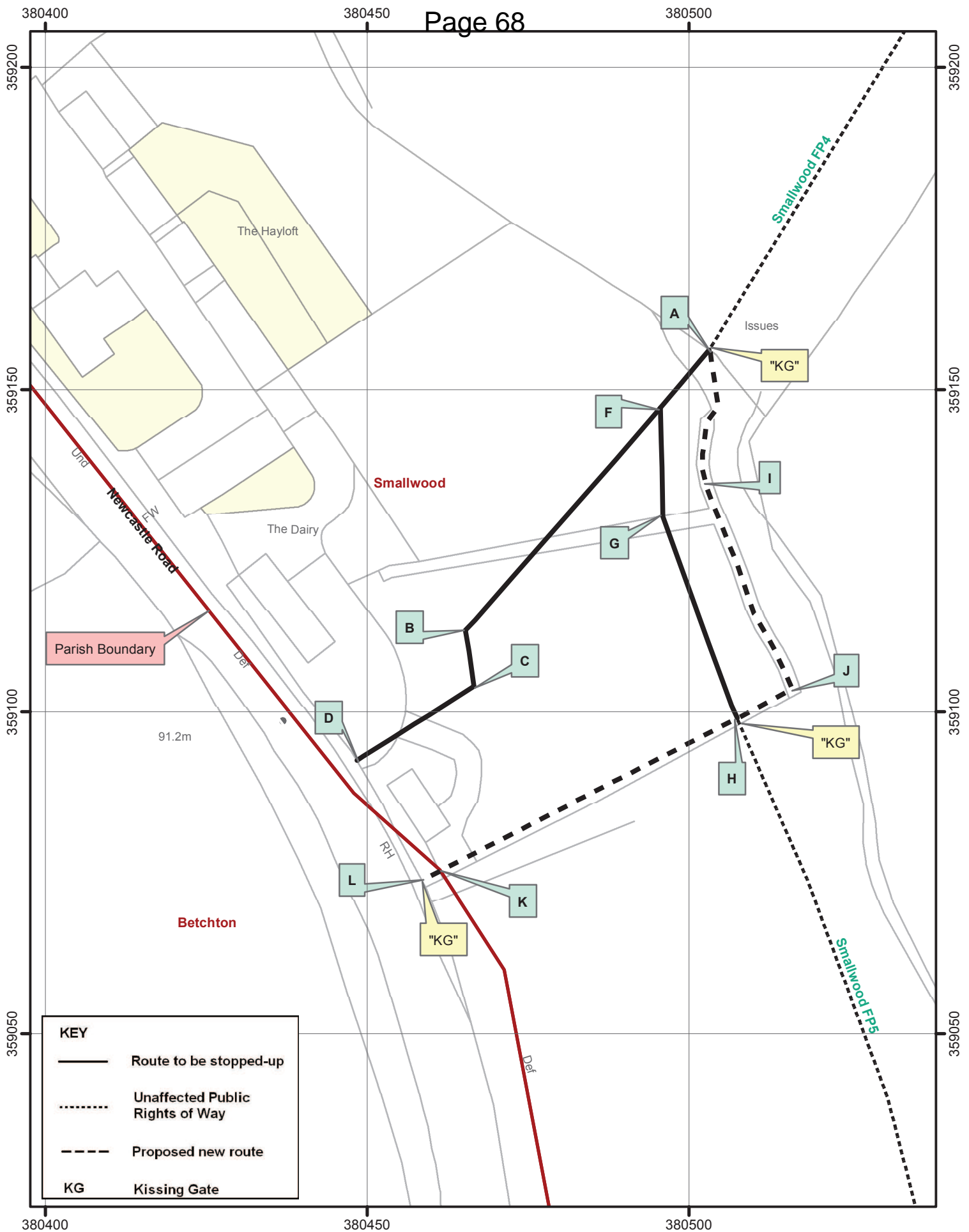
Designation: Public Path Orders Officer

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PROW File: 006D/488





1:750

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath No's 4 & 5 (parts) Parish of Smallwood)  
Public Path Diversion Order 2014

Plan No.  
HA/096



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath Nos. 4 and 5 (parts), Parish of Smallwood

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#### 1.0 Report Summary

The report outlines the investigation to divert part of Public Footpath Nos. 4 and 5 (parts), Parish of Smallwood. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of each footpath concerned.

- 1.1 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

#### 2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpaths No's 4 and 5, Parish of Smallwood by creating new sections of each public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/096 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or

occupier of the land crossed by the paths. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the paths are substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the paths or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public rights of way.
- The effect that any new public rights of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of property and promoting good land and stock (horses) management. It is considered that the proposed route will provide a satisfactory alternative to the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Brereton Rural Ward

#### **5.0 Local Ward Members**

5.1 Councillor John Wray

#### **6.0 Policy Implications**

6.1 Not applicable

## **7.0 Financial Implications**

7.1 Not applicable

## **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

10.1 An application has been received from Mrs J Darlington of The Dairy, Bears Head Farm, Newcastle Road, Smallwood, Cheshire, CW11 2GB requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 4 and 5 in the Parish of Smallwood.

10.2 Public Footpath No. 4 Smallwood, commences at its junction with Newcastle Road at O.S. grid reference SJ 8044 5909 and runs in a generally north, north easterly direction through the grounds of Dairy House farm and then across two fields. Upon entering a third field, the footpath starts to arc in generally north, north easterly, then northerly and then north, north easterly directions as it passes through two further fields and then along a track adjacent to Smallwood House to terminate at its junction with Church Lane at O.S. grid reference SJ 8060 6011.

Public Footpath No. 5 Smallwood, commences at its junction with Newcastle Road at O.S. grid reference SJ 8049 5884 and enters into a field to the east which it crosses in a north, north easterly direction to then run in a generally north, north westerly direction parallel to the eastern field boundary before entering a paddock which it crosses in the same general direction before following a generally northerly direction over the final few metres to its termination at its junction with Smallwood FP5 at O.S. grid reference SJ 8049 5914.

The section of Public Footpath Numbers 4 and 5, Smallwood, required to be diverted are shown by solid black lines on Plan No. HA/096 and the proposed diversions for these paths are illustrated with a black dashed lines on the same plan, running between points A-I-J-H and between points H-K respectively.

Note that there is a small section of path between points K-L that is not named. This path section will form a new footpath in the Parish of Betchton.

10.3 Mrs Darlington owns the land over which the current paths and the proposed diversion run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpaths.

10.4 The sections of each of Public Footpath No's 4 and 5 Smallwood to be diverted are currently unavailable for public use but if made available, the applicant would benefit from their diversion to a new route to enable better management of land and livestock (horses). Diverting the footpaths to a new route would also offer greater privacy and security to the applicant's property, "Dairy House Farm".

10.5 Referring to the attached plan, HA/096:

The new route would follow a grass track between fences that would skirt the boundary of the fields through which the current paths run. From point A, it would run in a generally southerly direction from the stile curving to then follow generally south, south easterly and then west, south westerly directions (A-I-J-K) along the track terminating at its junction with Newcastle Road (point K).

The path section between points A-I-J-H would become the new route for Smallwood FP4, the path section between points H-K would become the new route for Smallwood FP5. Since the new route crosses the parish boundary between Smallwood and Betchton before reaching the Newcastle Road, the path section between points K and L would form a new path within the parish of Betchton.

The new route would be enclosed between fences, have a grass track and be 2.5 metres wide. There would be kissing gates at points A, H and L.

In summary, the proposed new route would follow a line that would:

- be more convenient for users since it would have kissing gates instead of a solid electric gate and would run in a more direct route through the applicant's property that would reduce interaction between users and the applicants and their livestock (horses).
- enable the applicant to better manage their land and livestock.

This diversion would be made in the interests of the landowner.

10.6 The Ward Councillor has been consulted about the proposal. No comments were received.

10.7 Smallwood and Betchton Parish Councils have been consulted and did not register any objection. Members of Betchton Parish Council formally registered that they did not have any objection.

10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing

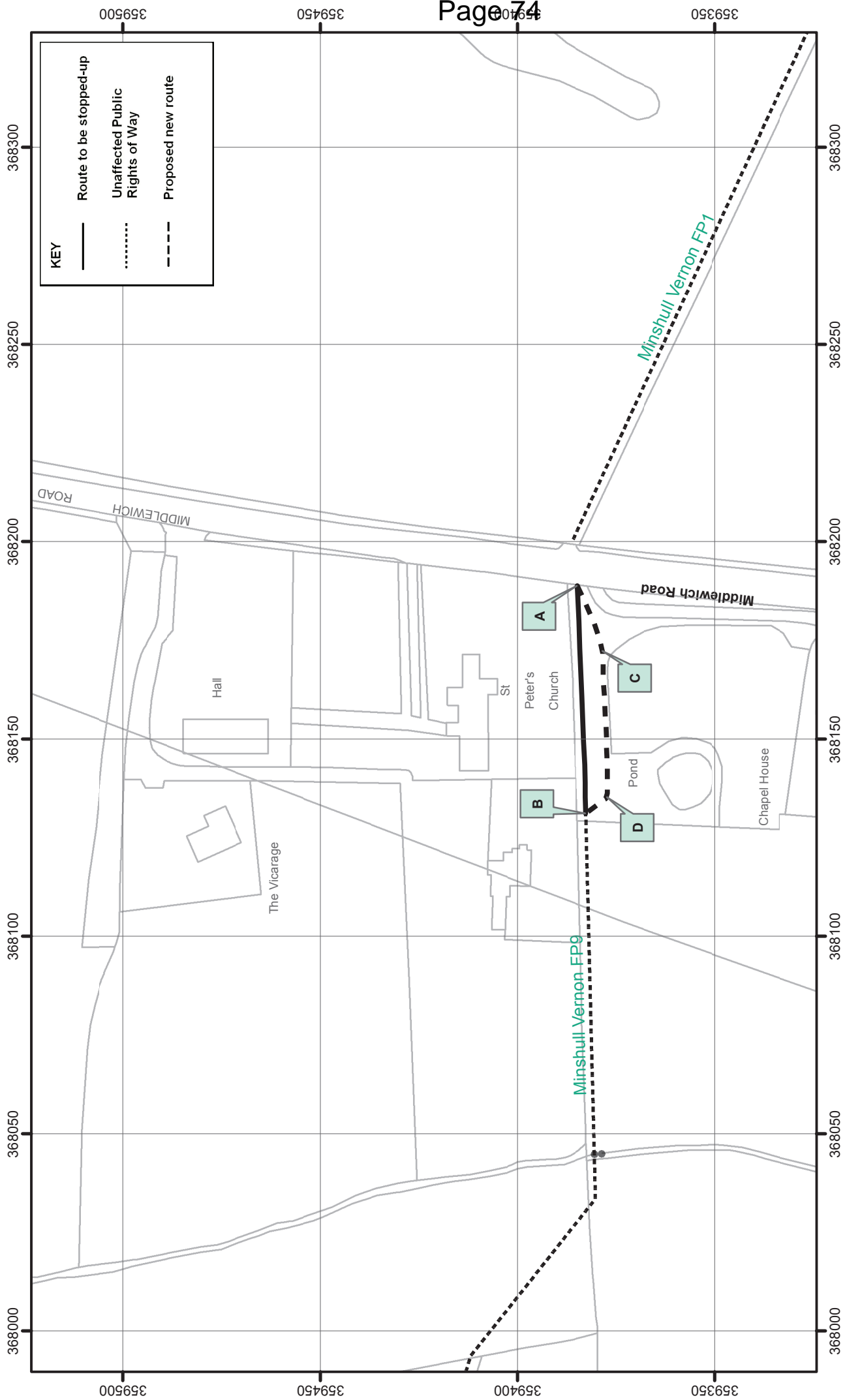
rights of access for the statutory undertakers to their apparatus and equipment are protected.

- 10.9 The user groups have been consulted. No other comments have been received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion will not be 'substantially less convenient' than the existing route.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Marianne Nixon  
Designation: Public Path Orders Officer  
Tel No: 01270 686 077  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)  
PROW File: 269D/492



Plan No.  
HA/097

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath No. 9 (part) Parish of Minshull Vernon)  
Public Path Diversion Order 2014



1:1,250

## **CHESHIRE EAST COUNCIL**

### **Public Rights of Way Committee**

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 9 (part), Parish of Minshull Vernon

---

#### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert part of Public Footpath No.9 (part) in the Parish of Minshull Vernon. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### **2.0 Recommendation**

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.9 Minshull Vernon by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/097 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### **3.0 Reasons for Recommendations**

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.



3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will enable better management of the property improved privacy and security. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Bunbury

#### **5.0 Local Ward Members**

5.1 Councillor Michael Jones

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to

confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

10.1 An application has been received from Mr R Windsor (agent) of Windsor & Company Chartered Surveyors, on behalf of the Reverend P Goggins of St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, Cheshire, CW1 4RD requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 9 in the Parish of Minshull Vernon.

10.2 Public Footpath No. 9, Minshull Vernon, commences at its junction with Middlewich Road at OS grid reference SJ 6818 5938 and runs in a generally westerly direction for approximately 156 metres following the access drive of "The Old Vicarage" before entering into and partially crossing a field. It then follows a north westerly direction for approximately 51 metres to exit this field into a second field which it crosses in a generally west, north westerly direction for approximately 533 metres to terminate at its junction with Eardswick Lane at O.S. grid reference SJ 6767 5950. The section of path to be diverted is shown by a solid black line on Plan No. HA/097 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D.

The length of Public Footpath No. 9, Minshull Vernon is 740 metres whereas the section of the path to be diverted and the proposed new route are 57 metres and 61 metres respectively.

10.3 The land over which the current path and the proposed diversion run belongs to St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, Cheshire, CW1 4RD. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.

10.4 The section of Public Footpath No. 9, Minshull Vernon to be diverted runs along the access drive of "The Old Vicarage". Diverting the path would improve management of the property by taking users along a fenced path aligned approximately 6 metres to the south of the current footpath so reducing interaction with vehicles using the drive. It would also offer improvement to the privacy and security to the property.

10.5 From point A on Middlewich Road, the proposed new route (A-C-D-B on Plan No. HA/097) would follow generally west, south westerly, then westerly and then north westerly directions to terminate on the current route immediately before a stile into the pasture field (point B).

The new route would have surfaces of semi-surfaced track and grass and would be enclosed to a width of 2 metres except between points C-D-B where it would be enclosed to a width of 2.5 metres. This fenced section would be entered via a gap at point C. The length of the new route would be approximately 61 metres.

The diversion would be in the interest of the landowner although it would also eliminate the need for users to share the access drive with vehicles.

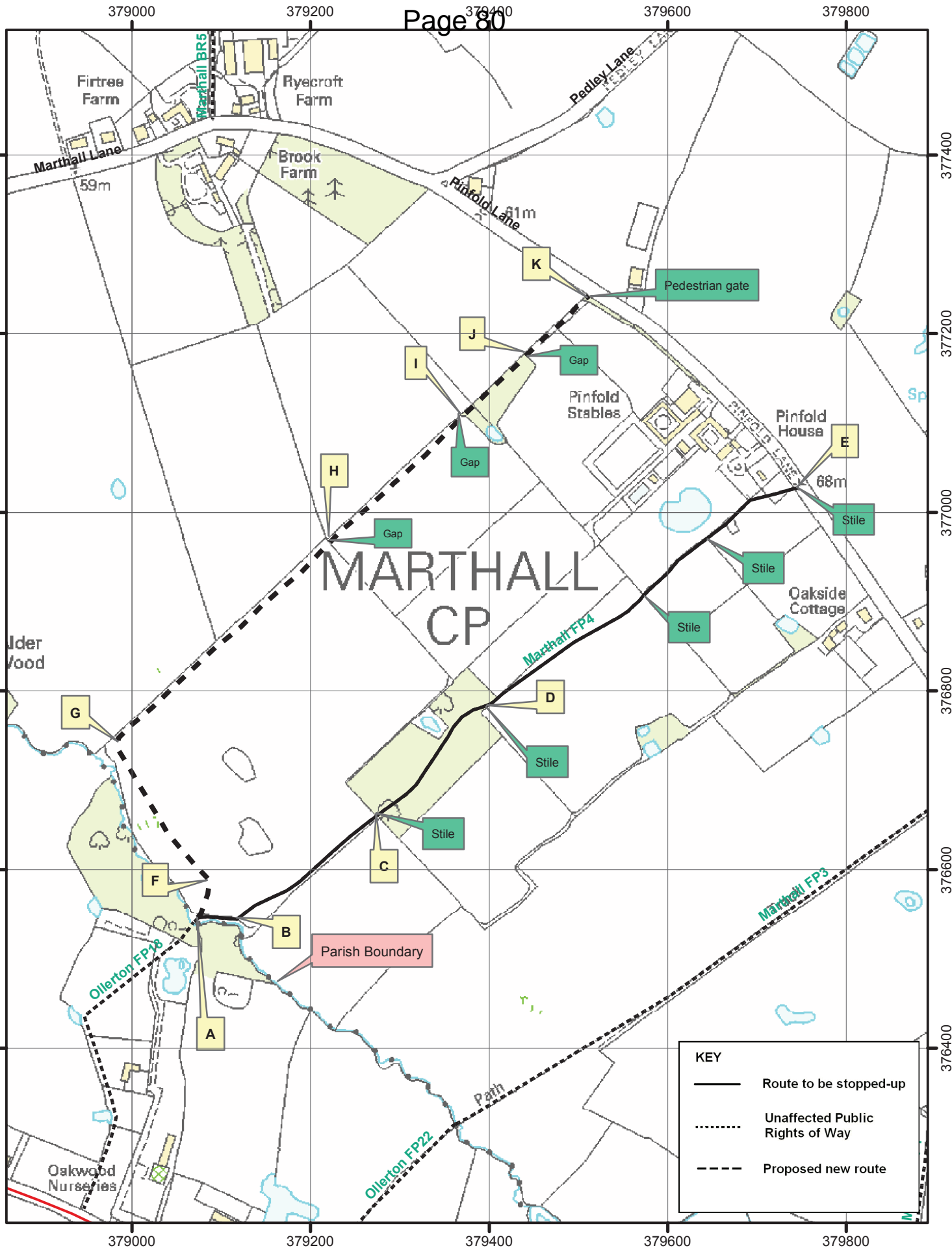
- 10.6 The Ward Councillor was consulted about the proposal. Acknowledgement and registration of support for the proposal were received.
- 10.7 Minshull Vernon and District Parish Council has been consulted and any comments will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Mid-Cheshire Footpath Society and Peak and Northern Footpath Society registered that they have no objection to the proposal. No other comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the 'old' route.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Marianne Nixon  
Designation: Public Path Orders Officer  
Tel No: 01270 686 077  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)  
PROW File: 209D/493

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KEY

- Route to be stopped-up
- ..... Unaffected Public Rights of Way
- - - Proposed new route



1:5,500

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath No. 4 (part) Parish of Marthall  
Public Path Diversion Order 2014

Plan No.  
HA/095



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 4 (part), Parish of Marthall

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.4 (part) in the Parish of Marthall. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.4 Marthall by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/095 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will enable better land and stock management, it is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Chelford

#### **5.0 Local Ward Members**

5.1 Councillor George Walton

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the

Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr P Jenkins (agent) on behalf of Mr Lilley of Amplepaint Ltd, Pinfold Stables, Pinfold Lane, Marthall, Knutsford, Cheshire, WA16 7SN requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 4 in the Parish of Marthall.
- 10.2 Public Footpath No. 4, Marthall, commences at its junction with Pinfold Lane at O.S. grid reference SJ 7974 7702 and runs in a generally south westerly direction through fields, woodland and further fields to then enter woodland where it follows a generally westerly direction to terminate at the parish boundary (where it becomes Public Footpath No. 18, Ollerton) at O.S. grid reference SJ 7906 7654. The section of path to be diverted is shown by a solid black line on Plan No. HA/095 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-H-I-J-K.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr Lilley of Amplepaint Ltd. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.4 The section of Public Footpath No. 4, Marthall to be diverted runs through pastureland that is used to 'turn out' horses. Diverting the path would enable the applicant to better manage his land, livestock (horses) and operations within the grounds of his stables business whilst providing users with a more convenient route that is no less enjoyable than the current route but is more convenient as it has less path furniture to negotiate and also eliminates the need to negotiate the livestock.
- 10.5 The proposed new route (A-F-G-H-I-J-K on Plan No. HA/095) would follow a generally north, north easterly direction to exit the woodland onto a pasture field (point F) where it would then follow the woodland boundary in a generally north westerly direction to the south west field corner (point G) before bearing in a north easterly direction to its junction with Pinfold Lane where it would terminate (point K).

Along the north easterly section (points G-H-I-J-K), it would pass through an unenclosed pasture field to a gap leading onto a fenced grassed track (points H-I) that would run along the north western boundary of a second field. The track would become semi-surfaced as it entered a woodland section via a gap (point I) and would run through this woodland unenclosed. It would then exit



the woodland via a gap (point J) to pass into another fenced section that would take it along the edge of final fields before passing through a pedestrian gate to its termination point with Pinfold Lane (point J).

The new route would be 2 metres wide and unenclosed except for the sections between points H-I and J-K when it would be enclosed by fencing to a width of 2.5 metres. The surface of the new route would be grass and semi-surfaced track.

Of benefit to the user, the proposed new route would:

- be more convenient for users since it would have just one pedestrian gate rather than five stiles to negotiate
- be more enjoyable for users being easier to navigate
- eliminate the need for users to negotiate livestock (horses)
- enable the applicant to better manage land, livestock and business operations.

This diversion would be made in the interests of the landowner.

- 10.6 The Ward Councillor was consulted about the proposal and formally registered that he had no objections to the proposal.
- 10.7 Ollerton and Marthall Parish Council has been consulted and any comments will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Peak and Northern Footpath Society registered that they have no objection. No other comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the old route because it has just one pedestrian gate rather than five stiles to negotiate.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

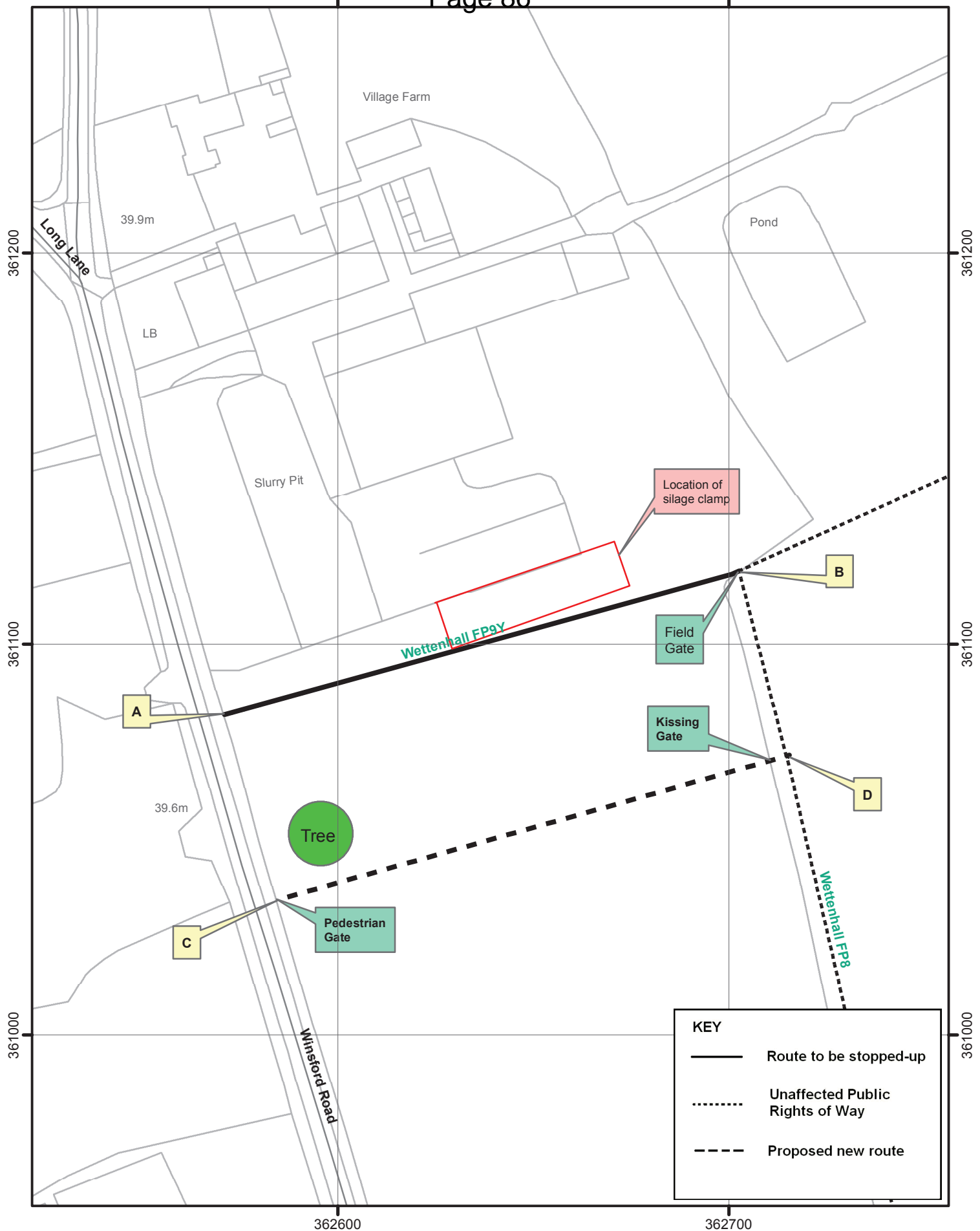
Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01270 686 077

Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

PROW File: 202D/490



1:1,250

Town and Country Planning Act 1990 s257  
 The Cheshire East Borough Council  
 (Footpath No. 9Y (part) Parish of Wettenhall)  
 Public Path Diversion Order 2014

Plan No.  
 TCPA/019



## **CHESHIRE EAST COUNCIL**

### **Public Rights of Way Committee**

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 9 (part), Parish of Wettenhall

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#### **1.0 Purpose of Report**

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 9 in the Parish of Wettenhall. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to an application from Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, Winsford, Cheshire, CW7 4DL, submitted after Mr Brooks was granted planning approval for the installation of a silage clamp at Village Farm (Planning reference: 14/1259N 'Proposed Agricultural Silage Clamp'). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### **2.0 Recommendations**

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 9 Wettenhall, as illustrated on Plan No. TCPA/019 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### **3.0 Reasons for Recommendation**

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted.

- 3.2 It is considered that it is necessary to divert part of Footpath No. 9 Wettenhall as illustrated on Plan No. TCPA/019, to allow for the installation of the silage clamp. Planning consent was granted on the 30<sup>th</sup> April 2014 by the local authority, reference number 14/1259N.
- 3.3 Initial consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.4 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Under section 259 of the Town and Country Planning Act 1990, the Secretary of State shall not confirm any such Order unless satisfied that the matters discussed at paragraph 3.1 are satisfied.
- 3.5 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.4.

#### **4.0 Ward Affected**

- 4.1 Bunbury

#### **5.0 Local Ward Members**

- 5.1 Councillor Michael Jones

#### **6.0 Financial Implications**

- 6.1 Not applicable

#### **7.0 Legal Implications**

- 7.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local authority to confirm the Order itself, and may lead to a hearing or an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

#### **8.0 Risk Assessment**

- 8.1 Not applicable

#### **9.0 Background and Options**

- 9.1 An application has been received from Mr S Starkey (agent) of Roston's Ltd on behalf of Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, Winsford, Cheshire, CW7 4DL requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 9 in the Parish of Wettenhall.

- 9.2 Public Footpath No. 9 Wettenhall commences from Winsford Road at O.S. grid reference SJ 6257 6108 and runs in a generally east, north easterly direction across five fields to terminate at the parish boundary at O.S. grid reference SJ 6359 6163. Along its length, it junctions with two other footpaths, Public Footpath No. 8 Wettenhall joins it in the second field and Public Footpath No. 10 Wettenhall joins it in the final field.

The section of path required to be diverted is approximately 136 metres long and is shown by a solid black line on Plan No. TCPA/019 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-D.

- 9.3 The Environment Agency has ordered J Brooks & Partners to construct the new silage clamp (160ft x 40ft) to comply with Nitrate Vulnerable Zone Regulations and a Silage Slurry and Agricultural Fuel Oil (SSAFO) Regulations. The only practical location where expansion of the farm can take place to accommodate the clamp is adjacent to existing silage clamps. However, placement at this point will directly affect the alignment of the footpath. Part of the current line of Public Footpath No.9 Wettenhall would be obstructed by the south eastern corner of the footprint of the planned silage clamp.
- 9.4 Planning permission was granted to the applicant on 30<sup>th</sup> April 2014. The application is cited as Planning Permission Ref: 14/1259N. The details of the decision notice are for the installation of a silage clamp.
- 9.5 Part of the current line of Public Footpath No.9 Wettenhall would be obstructed by the south eastern corner of the footprint of the planned silage clamp. Furthermore, regulations stipulate that there must be a clearance zone around the silage clamp. Therefore, to enable better management of both land and farm operations in relation to use of the silage clamp, it is proposed that the current route be diverted to cross the same field in a parallel alignment further south.
- 9.6 The land on which both the current and proposed paths would run is a field owned by Mr Brooks.
- 9.7 Referring to Plan No. TCPA/019, the proposed route for the footpath (C-D) is approximately 135 metres long.

The proposed new route would run in a generally east, north easterly direction across a pasture field from Winsford Road (point C) to reach the eastern hedged field boundary which it would then cross via a kissing gate before terminating at its junction with Wettenhall FP8 (point D).

Note that a ditch immediately before the kissing gate would be filled in as appropriate to make it 'fit for purpose' for walkers.

The route would be 2 metres wide throughout.

The proposed route as described has been designed to:

- eliminate the need for users to pass through the field gate (point B) where the ground is often uneven and difficult under foot due to heavy and concentrated use by cattle passing between fields
- take users safely away from farm operations at the silage clamp
- avoid wet areas to the north of the tree within the field

9.7 The local Councillor has been consulted about the proposal. No comments have been received.

9.8 Cholmondeston & Wettenhall Parish Council has been consulted about the proposal and comments will be reported verbally.

9.9 The statutory undertakers have also been consulted. No comments were received.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

9.10 The user groups have been consulted.

No other responses have been received.

9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

9.12 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be an improvement to the current route as it will have two kissing gates as opposed to a stile and will eliminate the need for users to negotiate wet and muddy conditions underfoot that can exist at the field gate on the current route.

## **10.00 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Officer: Marianne Nixon

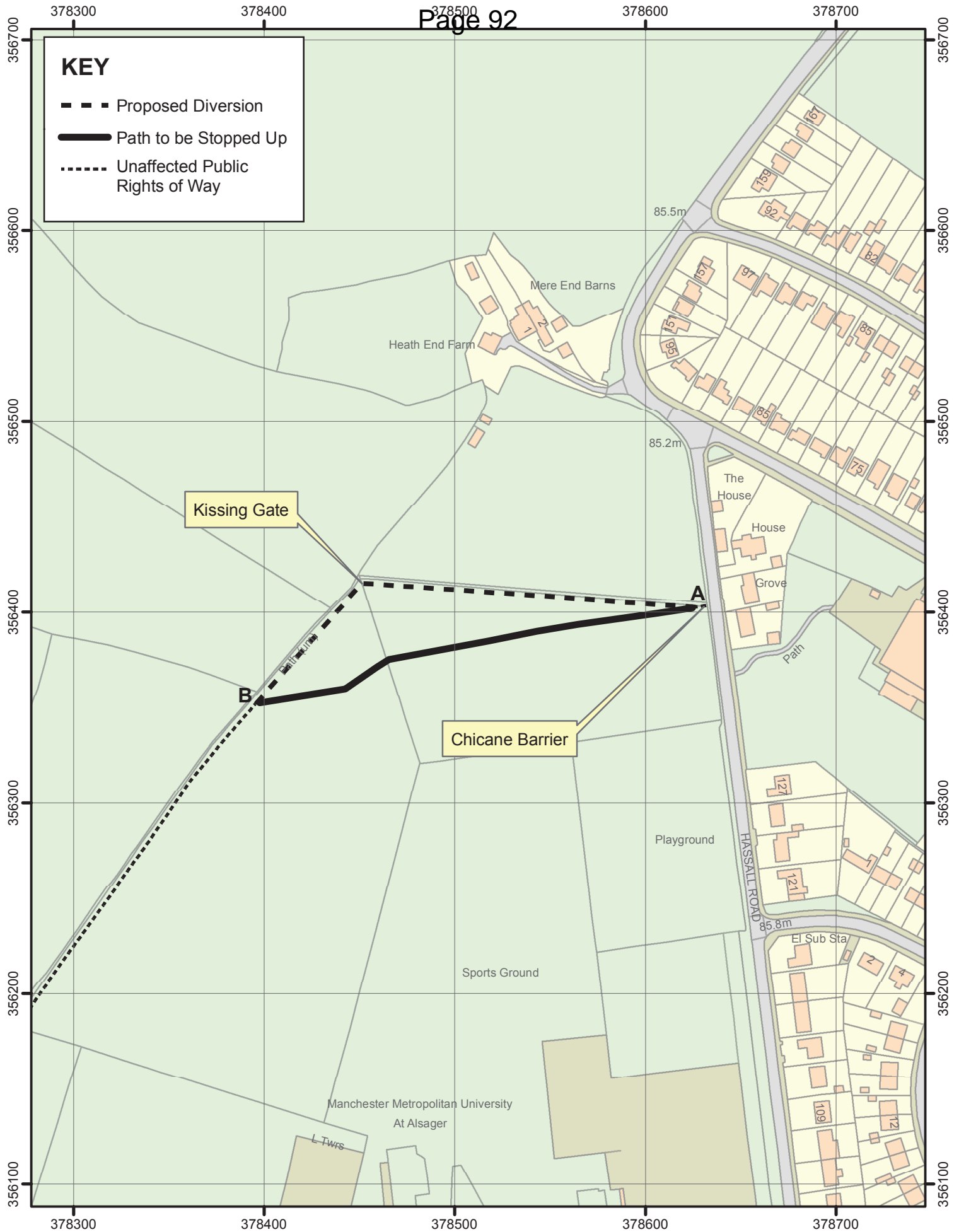
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Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

**Background Documents:** PROW file 311D/491

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Town and Country Planning Act 1990 S257  
Proposed Diversion of Public Footpath No. 3  
(Part) in the Parish of Alsager

Plan No.  
TCPA/018

This is a working copy of the definitive map  
and should not be used for legal purposes



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> June 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 3 (Part) Parish Of Alsager

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Alsager. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by Seddon Homes Limited, in response to planning approval granted for '*Erection of 30 Dwellings (Including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping*', planning application No. 12/1670C. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.
- 1.2 Members are required to consider the issues set out in this report and to make a decision as to whether the proposed footpath diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

#### 2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 3 Alsager as illustrated on Plan No. TCPA/018 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Local Planning Authority, can make an Order diverting a public footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been applied for.

- 3.2 It is considered that it is necessary to divert part of Footpath No. 3 Alsager as illustrated on Plan No. TCPA/018 to allow for the '*Erection of 30 Dwellings (Including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping*'.

- 3.3 Informal consultations have elicited no objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

#### **4.0 Wards Affected**

- 4.1 Alsager.

#### **5.0 Local Ward Members**

- 5.1 Councillors Shirley Jones, Derek Hough and Rod Fletcher.

#### **6.0 Financial Implications**

- 6.1.1 Not applicable.

#### **7.0 Legal Implications**

- 7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission applied for. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.

- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

#### **8.0 Risk Assessment**

- 8.1 Not applicable

#### **9.0 Background and Options**

- 9.1 An application has been received from Seddon Homes Limited ('the Applicant') requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 3 in the Parish of Alsager. Written consent from the landowners, Mr John R Foster and Mr H Heler, has been provided.

- 9.2 Public Footpath No. 3 Alsager commences on Hassall Road at OS grid reference SJ 7863 5640 and runs in a generally south westerly direction to Dunnocksfold Road at OS grid reference SJ 7794 5583. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/018 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B.
- 9.3 The proposed diversion, as illustrated on enclosed plan no. TCPA/018, is necessary to accommodate the housing development. The current line of the footpath will be obstructed by a number of properties and their gardens. The proposed route runs along the northern boundary of the site in a westerly direction from Hassall Road for approximately 175 metres. This section of the diversion will have a width of 2.5 metres where it is enclosed and 2 metres where it is unenclosed. This is indicated in yellow on the developers plan, Drawing No. HAS-PFP-00. It will have a stone surface with timber edging. It is proposed to install a chicane barrier at the eastern end of Public Footpath Alsager No. 3 (which is not affected by the proposed diversion), where it meets Hassall Road. This will help to improve safety at the junction for pedestrians and impede motor bike / cycle access on the footpath.
- 9.4 The proposed route then turns to run in a south westerly direction in the adjacent field for approximately 82 metres to rejoin with the existing line of the Alsager FP3. This section requires diverting to ensure continuation of the route. The adjacent landowner, Mr Heler, has provided written support and consent for this. A kissing gate will be installed at the field boundary which will improve accessibility for walkers on the route, who are currently required to navigate a stile on the existing line of the footpath. It will have a width of 2 metres and a grass/natural earth surface.
- 9.6 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.7 Alsager Town Council have been consulted about the proposal. No comments have been received.
- 9.8 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.9 The user groups have been consulted. No comments have been received.
- 9.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.11 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the existing route.

**10.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer.

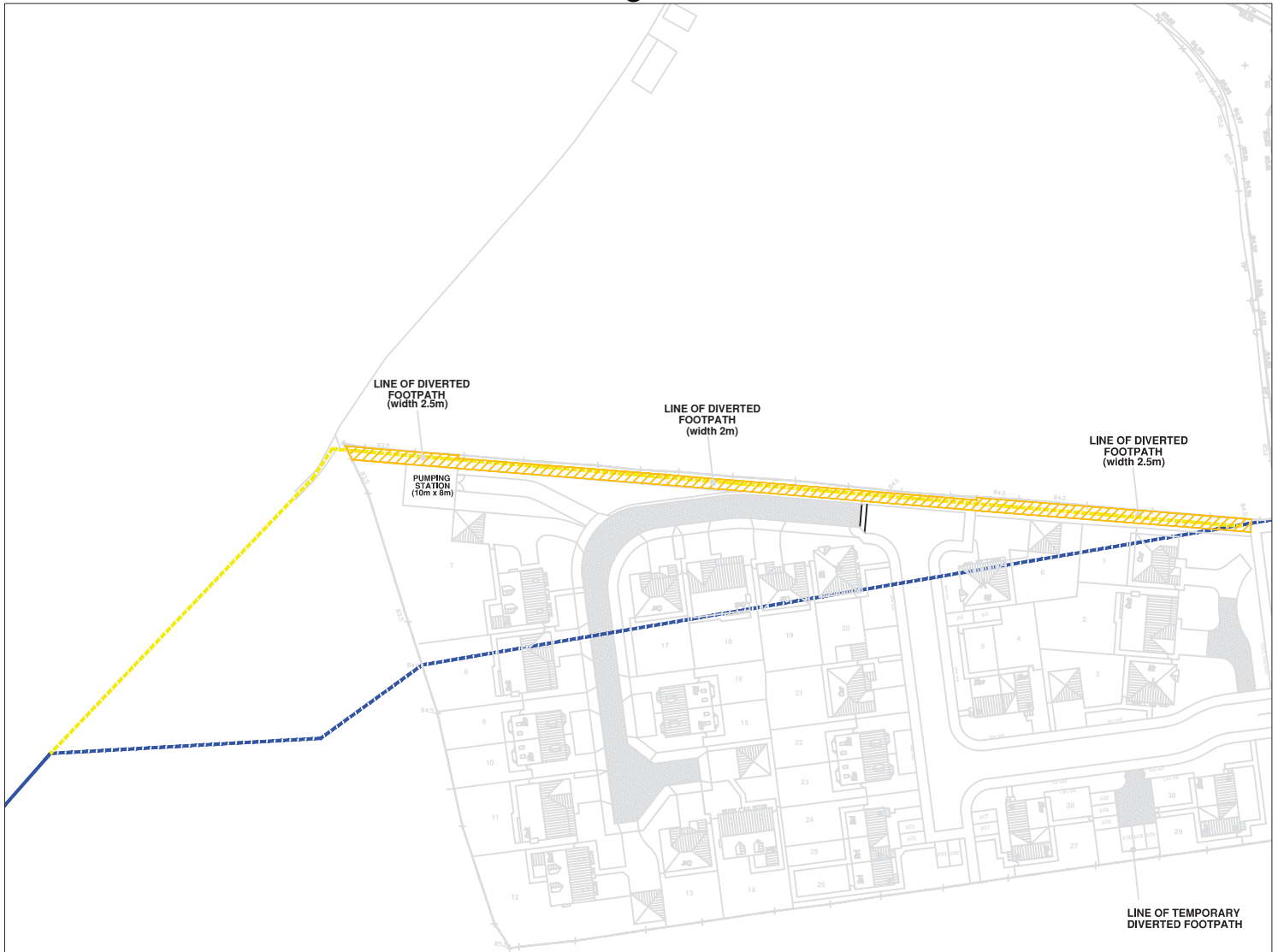
***For further information:***

*Officer: Hannah Duncan*




*Tel No: 01270 686062*


*Email: [hannah.duncan@cheshireeast.gov.uk](mailto:hannah.duncan@cheshireeast.gov.uk)*

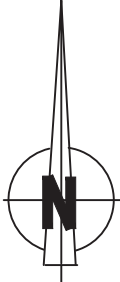
***Background Documents:*** *PROW file 011D/452*



KEY :

-  LINE AND WIDTH OF PROPOSED PUBLIC FOOTPATH
-  LINE OF PUBLIC FOOTPATH
-  LINE OF DIVERTED PUBLIC FOOTPATH

PROJECT <b>HASSALL ROAD ALSAGER</b>					
DRAWING TITLE <b>ROUTE OF PUBLIC FOOTPATH PLAN SHEET _ I</b>	SPEC N/A	Rev	Date	Notes	Initials
	AREA N/A				
SCALE 1:1250	DATE APR_14	DRAWN KM			
DWG NO. <b>HAS-PFP-01</b>	REV. -				



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